

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IYANNA DAVIS,

Plaintiffs,

**11-CV-0076
(LDW)(ARL)**

-against-

COUNTY OF NASSAU, NASSAU COUNTY POLICE
OFFICER MICHAEL CAPOBIANCO, Serial #6971,
SGT. HERMANN, POLICE OFFICER CARL
CAMPBELL, POLICE OFFICER DWIGHT
BLANKENSHIP, POLICE OFFICER JOSEPH
GRELLA, POLICE OFFICER JOHN DOES #1-5,
NASSAU COUNTY DISTRICT ATTORNEY'S
OFFICE INVESTIGATOR THOMAS BIDELE,
NASSAU COUNTY DISTRICT ATTORNEY'S
OFFICE INVESTIGATORS JOHN DOES #2-5,
NASSAU COUNTY ASSISTANT DISTRICT
ATTORNEY JOHN DOES #1-5,

**COUNTY DEFENDANTS'
DECLARATION IN
SUPPORT OF
MOTION THAT THE
COURT RULE ON THE
SEARCH WARRANT
AS A MATTER OF LAW**

Defendants.

-----X

THOMAS LAI, an attorney admitted to practice in the United States District Court for the Eastern District of New York, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. The undersigned is employed as a Deputy County Attorney, in the Office of John Ciampoli, Nassau County Attorney, and hereby represents defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE OFFICER MICHAEL CAPOBIANCO, Serial #6971, SGT. HERMANN, POLICE OFFICER CARL CAMPBELL, POLICE OFFICER DWIGHT BLANKENSHIP, POLICE OFFICER JOSEPH GRELLA and NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE INVESTIGATOR THOMAS BIDELE (the "County Defendants").

2. This Declaration in support and attached exhibits are being submitted in support of the County Defendants' Motion That The Court Rule On The Search Warrant As A Matter of Law.

3. Attached hereto as Exhibit A is a complete copy of the transcript of the deposition of Nassau County District Attorney's Office Investigator Thomas Bidell held on March 28, 2012.

4. Attached hereto as Exhibit B is a complete copy of the Nassau County Office of the District Attorney Video, Case No: Hom. SPL 21-10 Ferro, May 13, 2010.

5. Attached hereto as Exhibit C is are the relevant pages of the transcript of the deposition of Police Officer Michael Capobianco held March 12, 2012.

6. Attached hereto as Exhibit D is a complete copy of relevant transcript pages of the deposition of Police Officer Joseph Grella held on March 12, 2012.

7. Attached hereto as Exhibit E is a complete copy of the relevant transcript pages of the deposition of Police Officer Dwight Blankenship held March 12, 2012.

8. Attached hereto as Exhibit F is the affidavit of Sgt. John Hermann.

9. Attached hereto as Exhibit G is a complete copy of the relevant transcript pages of the deposition of Police Officer Carl Campbell held March 12, 2012.

10. Attached hereto as Exhibit H is a complete copy of the Supporting Deposition of Joanna Little dated May 13, 2010 at 8:30AM.

11. Attached hereto as Exhibit I is a complete copy of the "No Knock" search warrant signed by Judge Steven Jaeger.

Dated: Mineola, New York
March 11, 2014

CARNELL T. FOSKEY
Acting County Attorney
By: Thomas Lai
Thomas Lai
Deputy County Attorney
One West Street
Mineola, NY 11501

(516) 571-6074

To: Charles Horn (via ECF)

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

IYANNA DAVIS,

Plaintiff,

vs.

CV-11-0076

COUNTY OF NASSAU, NASSAU COUNTY
POLICE OFFICER "JOHN" SMITH,
NASSAU COUNTY POLICE OFFICER
JOHN DOES #1-5, NASSAU COUNTY
ASSISTANT DISTRICT ATTORNEY'S
JOHN DOES #1-5, NASSAU COUNTY
DISTRICT ATTORNEY INVESTIGATORS
JOHN DOES #1-5,

Defendants.

-----X

DEPOSITION OF THOMAS BIDELE

Lake Success, New York

Wednesday, March 28, 2012

Reported by:

Thomas R. Nichols, RPR

JOB NO. 24763

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<div>2</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <p>March 28, 2012 10:28 a.m.</p> <p>Deposition of THOMAS BIDE LL, held at the offices of Friedman, Harfenist, Kraut & Perlstein, LLP, 3000 Marcus Avenue, Lake Success, New York, pursuant to Subpoena, before Thomas R. Nichols, a Registered Professional Reporter and a Notary Public of the State of New York.</p>	<div>4</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <p>IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.</p> <p>IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.</p>
<div>3</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <p>APPEARANCES:</p> <p>Attorneys for Plaintiff</p> <p>FRIEDMAN, HARFENIST, KRAUT & PERLSTEIN, LLP 3000 Marcus Avenue, Suite 2E1 Lake Success, New York 11042 BY: CHARLES HORN, ESQ. chorn@fhkplaw.com</p> <p>Attorney for Defendants</p> <p>DIANE C. PETILLO, ESQ. Deputy County Attorney One West Street Mineola, New York 11501</p>	<div>5</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <p>Bidell</p> <p>THOMAS BIDE LL, whose business address is 272 Old Country road, Nassau, New York called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:</p> <p>EXAMINATION BY</p> <p>MR. HORN:</p> <p>Q. Good morning, sir.</p> <p>A. Good morning.</p> <p>Q. First question, have you ever been deposed before?</p> <p>A. Yes, I have.</p> <p>Q. I'll go through some of the ground rules. I'm sure you already know them. Just make sure we don't speak at the same time for a complete record. The court reporter won't be able to take down both of us speaking at the same time. If you nod your head, gesture with your hand or do anything, any gesticulation, just make sure that you verbalize it that way so that the record is complete to actually what you meant.</p> <p>I would ask you to stay away from expressions like "uh-uh" or "yeah," because it's not clear whether you're encouraging me to</p>

2 (Pages 2 to 5)

<p>6</p> <p>1 Bidell</p> <p>2 continue or you're answering in the affirmative.</p> <p>3 If you have any questions, please</p> <p>4 indicate so. If you don't understand a question,</p> <p>5 I'll attempt to rephrase it. If you want to take</p> <p>6 a break for any reason, feel free to do so. I</p> <p>7 just ask you to answer any open question prior to</p> <p>8 doing so, OK?</p> <p>9 A. OK.</p> <p>10 Q. Are you presently employed?</p> <p>11 A. Yes, I am.</p> <p>12 Q. By whom?</p> <p>13 A. Nassau County District Attorney's</p> <p>14 Office.</p> <p>15 Q. In what capacity?</p> <p>16 A. As a special investigator.</p> <p>17 Q. How long have you been so employed?</p> <p>18 A. Just over five years.</p> <p>19 Q. Did you attend any schooling in order</p> <p>20 to hold that position with the Nassau County</p> <p>21 District Attorney's Office?</p> <p>22 A. No, I did not.</p> <p>23 Q. Prior to being a Nassau County special</p> <p>24 investigator how were you employed?</p> <p>25 A. With the NYPD.</p>	<p>8</p> <p>1 Bidell</p> <p>2 Q. What type of cases did you work on</p> <p>3 with Housing as a third grade detective?</p> <p>4 A. Any detective bureau cases from minor</p> <p>5 aggravated harassment to homicide.</p> <p>6 Q. And that didn't change when you moved</p> <p>7 up in grade to second grade, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. After the merger in 1995 in what</p> <p>10 capacity did you serve in the NYPD?</p> <p>11 A. Detective.</p> <p>12 Q. And was that also in the beginning at</p> <p>13 second grade?</p> <p>14 A. That's correct.</p> <p>15 Q. How long were you second grade</p> <p>16 detective with the NYPD?</p> <p>17 A. Well, between the two it was about</p> <p>18 five years.</p> <p>19 Q. Did there come a time where your grade</p> <p>20 changed?</p> <p>21 A. Yes.</p> <p>22 Q. And what year was that?</p> <p>23 A. I'm not sure of the exact year. I</p> <p>24 would say somewhere around '99, but I'm not really</p> <p>25 sure.</p>
<p>7</p> <p>1 Bidell</p> <p>2 Q. What did you do for the NYPD?</p> <p>3 A. I was a detective.</p> <p>4 Q. What grade?</p> <p>5 A. First grade.</p> <p>6 Q. When did you first join the NYPD?</p> <p>7 A. I started in 1983 with the Housing</p> <p>8 Police and the merge came in I believe '95.</p> <p>9 Q. Now, with the Housing Police dealing</p> <p>10 with the time frame of 1983 to approximately 1995,</p> <p>11 in what capacity did you serve the City of</p> <p>12 New York?</p> <p>13 A. A police officer and detective.</p> <p>14 Q. How long were you a police officer</p> <p>15 with the Housing?</p> <p>16 A. Five years.</p> <p>17 Q. After that five years that's when you</p> <p>18 became a detective?</p> <p>19 A. Correct.</p> <p>20 Q. What grade?</p> <p>21 A. Second grade. I started as third and</p> <p>22 then second.</p> <p>23 Q. Were you second grade detective by the</p> <p>24 time the merger took place in 1995?</p> <p>25 A. I was.</p>	<p>9</p> <p>1 Bidell</p> <p>2 Q. Are you comfortable with somewhere</p> <p>3 around 2000?</p> <p>4 A. Yes.</p> <p>5 Q. When you changed from second grade</p> <p>6 detective to first grade did your work assignments</p> <p>7 change in any way?</p> <p>8 A. No.</p> <p>9 Q. At no point in time with your time</p> <p>10 with either Housing or the NYPD did you ever go up</p> <p>11 in rank.</p> <p>12 A. Other than first grade?</p> <p>13 Q. Other than grade. I'm talking about</p> <p>14 rank from either officer or detective to sergeant.</p> <p>15 A. That's correct. As far as job</p> <p>16 description though after 9/11 I was transferred to</p> <p>17 the FBI terrorist task force.</p> <p>18 Q. Prior to 9/11 while with the NYPD from</p> <p>19 approximately 1995 to 2001 did you perform</p> <p>20 basically the same type of investigations,</p> <p>21 anything from minor harassments all the way up to</p> <p>22 homicides?</p> <p>23 A. Yes. I was in a regular catching</p> <p>24 squad, the Fifth Squad, and then there was a</p> <p>25 point, I believe '97, where I was transferred to</p>

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<p style="text-align: right;">10</p> <p>1 Bidell</p> <p>2 the homicide squad, Manhattan South Homicide.</p> <p>3 Q. So in approximately 1997 it was</p> <p>4 homicides that you were investigating, correct?</p> <p>5 A. Correct. Well, it was the homicide</p> <p>6 squad, but you would still, being that it was</p> <p>7 Manhattan South, anything that was newsworthy</p> <p>8 you'd also end up getting involved in. If it was</p> <p>9 criminal you would may be almost used like</p> <p>10 homicide/task force, so...</p> <p>11 Q. Would you characterize your job duties</p> <p>12 as primarily homicide or were these task force</p> <p>13 duties the primary or something else?</p> <p>14 A. Primarily homicide and the other cases</p> <p>15 were usually like shootings that were not likely.</p> <p>16 Q. You indicated in 2001 you were</p> <p>17 assigned to the FBI terrorist task force, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. I'm sorry, I may have put words in</p> <p>20 your mouth. You said after 9/11.</p> <p>21 Was that in 2001 that you were</p> <p>22 assigned to the FBI task force?</p> <p>23 A. Yes.</p> <p>24 Q. What were your job duties with the FBI</p> <p>25 terrorist task force?</p>	<p style="text-align: right;">12</p> <p>1 Bidell</p> <p>2 or international?</p> <p>3 A. Just exactly that.</p> <p>4 Q. So the international squad you weren't</p> <p>5 dealing with individuals that were in the United</p> <p>6 States?</p> <p>7 A. It ended up, you would end up because</p> <p>8 9/11 happened here, but it was primarily</p> <p>9 international.</p> <p>10 Q. But what was the difference as far as</p> <p>11 tasking between domestic and international?</p> <p>12 A. You would get, um, domestic would get</p> <p>13 cases that happened or are occurring in New York,</p> <p>14 new leads, other new cases and we wouldn't be</p> <p>15 involved in that. Going out to follow up on new</p> <p>16 leads, so-and-so was plotting this or that. In</p> <p>17 New York we wouldn't handle that.</p> <p>18 Q. That would be the domestic side.</p> <p>19 A. Correct.</p> <p>20 Q. And the international side would be</p> <p>21 doing research and investigating information that</p> <p>22 was gained from international sources as well as</p> <p>23 domestic sources regarding individuals or</p> <p>24 information that were without the country?</p> <p>25 A. Right. We would -- that and we would</p>
<p style="text-align: right;">11</p> <p>1 Bidell</p> <p>2 A. Investigating international terrorism.</p> <p>3 Q. Without going into any specifics, how</p> <p>4 did you do that?</p> <p>5 A. We were assigned cases, assigned</p> <p>6 targets relating to both the 9/11 attack and other</p> <p>7 attacks around the world.</p> <p>8 Q. As far as your participation in this</p> <p>9 task force were you given assignments by</p> <p>10 geography? For instance, those targets that</p> <p>11 resided or were believed to have resided in</p> <p>12 New York.</p> <p>13 A. By geography, yes. Not necessarily</p> <p>14 New York. I was on an international squad.</p> <p>15 Q. Did you work with FBI agents?</p> <p>16 A. Yes.</p> <p>17 Q. Were your job duties any different</p> <p>18 than the FBI agents that you worked with in your</p> <p>19 particular unit?</p> <p>20 A. No.</p> <p>21 Q. I'm sorry, you called it an</p> <p>22 international squad?</p> <p>23 A. Yes, there is a domestic and an</p> <p>24 international side.</p> <p>25 Q. What's the difference besides domestic</p>	<p style="text-align: right;">13</p> <p>1 Bidell</p> <p>2 go out to several different countries and conduct</p> <p>3 interviews and investigations.</p> <p>4 Q. How long were you with the FBI</p> <p>5 terrorist task force?</p> <p>6 A. Just over five years.</p> <p>7 Q. Was that approximately when you left</p> <p>8 the NYPD?</p> <p>9 A. Yes, that's correct -- um, I'm sorry,</p> <p>10 I didn't understand.</p> <p>11 Q. Were you with the --</p> <p>12 A. I was with the NYPD at that time. I</p> <p>13 was assigned to the NYPD working with the FBI.</p> <p>14 Q. And when you left the FBI task force</p> <p>15 you left the NYPD.</p> <p>16 A. At the same time, retired from -- I</p> <p>17 retired from the NYPD, yes. That was my last</p> <p>18 assignment.</p> <p>19 Q. Was there any gap between your</p> <p>20 employment with the NYPD and the Nassau County</p> <p>21 District Attorney's Office?</p> <p>22 A. Approximately five days.</p> <p>23 Q. When did you interview for the Nassau</p> <p>24 County District Attorney's Office?</p> <p>25 A. A few months before I retired. I'm</p>

4 (Pages 10 to 13)

<p style="text-align: right;">14</p> <p>1 Bidell</p> <p>2 not sure exactly when.</p> <p>3 Q. Did you secure a waiver within that</p> <p>4 five months?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And you know what I'm talking about,</p> <p>7 the pension waiver, correct?</p> <p>8 A. Yes, 211 waiver.</p> <p>9 MS. PETILLO: And just so we're clear,</p> <p>10 he said a few months. I think you said five</p> <p>11 months.</p> <p>12 MR. HORN: Oh, I'm sorry.</p> <p>13 THE WITNESS: A few months.</p> <p>14 Q. A few months. And you were able to</p> <p>15 secure a 211 waiver in the few months between your</p> <p>16 interview process and actually securing a job with</p> <p>17 the Nassau County District Attorney's Office?</p> <p>18 A. Yeah, the waiver was obtained or</p> <p>19 submitted by the Nassau County District Attorney's</p> <p>20 Office.</p> <p>21 Q. On your behalf.</p> <p>22 A. Yes.</p> <p>23 Q. Who was the DA when you secured</p> <p>24 employment with the District Attorney's Office?</p> <p>25 A. Kathleen Rice.</p>	<p style="text-align: right;">16</p> <p>1 Bidell</p> <p>2 outside agencies and they no longer do. So I'm</p> <p>3 still liaison, but it's not quite as intense as it</p> <p>4 was.</p> <p>5 Q. Other than this liaison position have</p> <p>6 your job duties changed at all within the Nassau</p> <p>7 County District Attorney's Office from the time</p> <p>8 you entered it till the present?</p> <p>9 A. No.</p> <p>10 Q. The Nassau County District Attorney's</p> <p>11 Office special investigators work within a</p> <p>12 subdivision of the Nassau County District</p> <p>13 Attorney's Office, do they not?</p> <p>14 A. It's a bureau of the District</p> <p>15 Attorney's Office, yes.</p> <p>16 Q. And that bureau, when you first joined</p> <p>17 the bureau, who was the chief or supervisor of</p> <p>18 that bureau?</p> <p>19 A. Chuck Ribando.</p> <p>20 Q. Can you spell the last?</p> <p>21 A. R-i-b-a-n-d-o.</p> <p>22 Q. He's an investigator, correct?</p> <p>23 A. He is the chief investigator or he was</p> <p>24 the chief investigator. He has been since</p> <p>25 promoted. I don't know what his title is now.</p>
<p style="text-align: right;">15</p> <p>1 Bidell</p> <p>2 Q. And when you first joined the Nassau</p> <p>3 County District Attorney's Office what was your</p> <p>4 tasking?</p> <p>5 A. Just a special investigator</p> <p>6 investigating whatever the type of cases they</p> <p>7 assigned to me.</p> <p>8 Q. You've remained at that</p> <p>9 characterization, a special investigator, for the</p> <p>10 five years, correct?</p> <p>11 A. Right. And I also, um, was also the</p> <p>12 liaison to the terrorist task force from the</p> <p>13 Nassau County District Attorney's Office.</p> <p>14 Q. Was that immediately upon entering the</p> <p>15 Nassau County District Attorney's Office?</p> <p>16 A. That's correct.</p> <p>17 Q. When you say the liaison to the</p> <p>18 terrorist task force, you're referring to the FBI</p> <p>19 terrorist task force, right?</p> <p>20 A. That's correct.</p> <p>21 Q. And you've remained that liaison for</p> <p>22 the five years you have been with the Nassau</p> <p>23 County District Attorney's Office?</p> <p>24 A. That's correct. It has slowed down a</p> <p>25 bit, but they used to have regular meetings with</p>	<p style="text-align: right;">17</p> <p>1 Bidell</p> <p>2 Something higher up.</p> <p>3 Q. Does he still run the bureau?</p> <p>4 A. Yes.</p> <p>5 Q. Now, the bureau, what's it called?</p> <p>6 A. Investigations bureau.</p> <p>7 Q. Is it the special investigations</p> <p>8 bureau or just investigations bureau?</p> <p>9 A. Investigations bureau. I believe it's</p> <p>10 investigations bureau.</p> <p>11 Q. As far as the composition of the</p> <p>12 personnel within the bureau, you have special</p> <p>13 investigators, you obviously have the chief and</p> <p>14 you also have assistant district attorneys that</p> <p>15 are assigned to that unit, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. As well as support staff.</p> <p>18 A. That's correct.</p> <p>19 Q. When you first joined the bureau how</p> <p>20 many special investigators did the bureau have?</p> <p>21 A. I think it has maintained somewhere</p> <p>22 between I would say 35 and 40 at a time there.</p> <p>23 Q. In the time you've been there how many</p> <p>24 assistant district attorneys at any one time have</p> <p>25 been assigned to the bureau?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">18</p> <p>1 Bidell</p> <p>2 A. I'm really not sure.</p> <p>3 Q. As far as do you deal with any</p> <p>4 assistant district attorneys in your job duties</p> <p>5 presently?</p> <p>6 A. I do.</p> <p>7 Q. How many do you deal with?</p> <p>8 A. It all depends on what kind of case.</p> <p>9 I mean, we deal with several. I can deal with</p> <p>10 twenty, you know, in just a short brief case, one</p> <p>11 single case with them and move on or I could do an</p> <p>12 assignment for someone and move on.</p> <p>13 Q. As far as the investigations bureau is</p> <p>14 concerned, they have their own, as well as working</p> <p>15 for the District Attorney's Office on cases that</p> <p>16 may require an investigator, they run their own</p> <p>17 case load, correct?</p> <p>18 A. I believe so.</p> <p>19 Q. And how many assistant district</p> <p>20 attorneys participate in any given time in running</p> <p>21 that case load?</p> <p>22 A. I don't know.</p> <p>23 Q. Where is the office of the Bureau of</p> <p>24 Investigations located?</p> <p>25 A. 272 Old Country Road, Mineola,</p>	<p style="text-align: right;">20</p> <p>1 Bidell</p> <p>2 A. I think every bureau has their own</p> <p>3 office. So, I mean, if your own office is</p> <p>4 segregated, yes.</p> <p>5 Q. How many assistant district attorneys</p> <p>6 occupy office space within this area that is</p> <p>7 utilized by the Bureau of Investigations?</p> <p>8 MS. PETILLO: Can you repeat the</p> <p>9 question?</p> <p>10 MR. HORN: I'll rephrase it.</p> <p>11 Q. There is a segregated area for the</p> <p>12 Bureau of Investigations, correct?</p> <p>13 A. You know? The way I know it of only,</p> <p>14 and I really don't know more about it, the special</p> <p>15 investigators have an office space to themselves</p> <p>16 both on the first floor and the basement. Then</p> <p>17 the rest of the building is those different</p> <p>18 bureaus, and I don't know if they are all part of</p> <p>19 investigations. I'm not sure how the flow chart</p> <p>20 goes exactly.</p> <p>21 Q. During your duties with the Nassau</p> <p>22 County District Attorney's Office have you ever</p> <p>23 had the occasion to investigate an individual</p> <p>24 named Stephanie Swan?</p> <p>25 A. No. I don't really recall the name.</p>
<p style="text-align: right;">19</p> <p>1 Bidell</p> <p>2 New York.</p> <p>3 Q. That's a building immediately facing</p> <p>4 the courthouse to the right?</p> <p>5 A. Correct.</p> <p>6 Q. And that building has three floors</p> <p>7 including the basement?</p> <p>8 A. Including the basement, yes.</p> <p>9 Q. Are there any other bureaus that</p> <p>10 occupy that building other than investigations</p> <p>11 bureau?</p> <p>12 A. Yes, there are.</p> <p>13 Q. Which others?</p> <p>14 A. Public corruption, asset forfeiture.</p> <p>15 There's another one. I don't know what they call</p> <p>16 it. There's another one. The name escapes me.</p> <p>17 I'm not sure what it is.</p> <p>18 Q. Within the building, the</p> <p>19 investigations bureau is segregated from these</p> <p>20 other bureaus, is it not?</p> <p>21 A. I'm sorry?</p> <p>22 Q. Within the building, the</p> <p>23 investigations bureau is segregated from these</p> <p>24 other subdivisions of the District Attorney's</p> <p>25 Office, correct?</p>	<p style="text-align: right;">21</p> <p>1 Bidell</p> <p>2 Q. Have you ever in your time with the</p> <p>3 Nassau County District Attorney's Office</p> <p>4 investigated an individual named Reginald Lecator?</p> <p>5 A. Yes. Well, I have him as Rashon.</p> <p>6 Q. How do you spell Rashon?</p> <p>7 A. R-a-s-h-o-n.</p> <p>8 Q. And that last name is L-e-c-a-t-o-r?</p> <p>9 A. I have it both ways, t-u-r and t-o-r.</p> <p>10 I have the sister as o-r and he as u-r.</p> <p>11 Q. Did that individual either Rashon</p> <p>12 Lecator or Reginald Lecator, regardless of whether</p> <p>13 it is o-r or u-r, did that individual reside or</p> <p>14 did you have information that that individual</p> <p>15 resided at 31 Lafayette Avenue, Hempstead,</p> <p>16 New York?</p> <p>17 A. That's correct.</p> <p>18 Q. When did that investigation begin?</p> <p>19 A. I think the beginning of April 2010.</p> <p>20 Q. How did you first become involved in</p> <p>21 it?</p> <p>22 A. I had an informant that we were doing</p> <p>23 drug buys from/with in the Hempstead area, and he</p> <p>24 had originally, the original location that we were</p> <p>25 targeting was 20 Miriam Street in Hempstead.</p>

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<p style="text-align: right;">22</p> <p>1 Bidell</p> <p>2 Q. Miriam, is that M-i-r-i-a-m?</p> <p>3 A. Correct. And we had arranged a drug</p> <p>4 buy with a fellow known as Sha from 20 Miriam</p> <p>5 Street, and when the buy went down Sha had sent</p> <p>6 Reginald Lecator or Rashon Lecator to make the</p> <p>7 deal. And that's how we began then looking at 31</p> <p>8 Lafayette. The informant knew Rashon to reside at</p> <p>9 31 Lafayette.</p> <p>10 Q. Who was the individual that you were</p> <p>11 looking into at 20 Miriam Street?</p> <p>12 A. His nickname was Sha; S-h-a.</p> <p>13 Q. You testified that Sha sent Rashon or</p> <p>14 Reginald Lecator to do the buy; is that correct?</p> <p>15 A. The sale, yes.</p> <p>16 Q. The sale. Where did Rashon or</p> <p>17 Reginald Lecator perform this sale?</p> <p>18 A. That was in a street corner or</p> <p>19 vicinity of Lafayette and Miriam.</p> <p>20 Q. How close geographically are 31</p> <p>21 Lafayette Avenue and 20 Miriam?</p> <p>22 A. If you look at, um, it kind of forms a</p> <p>23 T. If Miriam is -- if Lafayette is the top of the</p> <p>24 T, Miriam comes straight down into almost the</p> <p>25 middle of 31 Lafayette.</p>	<p style="text-align: right;">24</p> <p>1 Bidell</p> <p>2 Rashon Lecator or Reginald Lecator and</p> <p>3 31 Lafayette Avenue?</p> <p>4 A. Yes.</p> <p>5 Q. And how did you make that connection?</p> <p>6 A. As I said earlier, the informant knew</p> <p>7 at that time Reginald or Rashon. He was known to</p> <p>8 the informant as Shon and he knew him to reside at</p> <p>9 31 Lafayette Avenue.</p> <p>10 Q. Did you observe the sale in early</p> <p>11 April between Rashon or Reginald Lecator and the</p> <p>12 informant?</p> <p>13 A. I observed the meeting, but not the</p> <p>14 whole sale, no.</p> <p>15 Q. Can you tell me what you mean by that?</p> <p>16 A. We had to keep moving. 20 Miriam is</p> <p>17 what they would describe as a crack house, an</p> <p>18 active crack house, and with that they had</p> <p>19 lookouts up and down the block, around the side of</p> <p>20 the block for the police. So it was a tough area</p> <p>21 to do a, conduct a surveillance. They would just</p> <p>22 sit right there. So we had to drive by so we'd</p> <p>23 see a piece of the sale. We wouldn't sit there</p> <p>24 for the entire sale. We would see the meeting or</p> <p>25 we would see a hand to hand, depending on what</p>
<p style="text-align: right;">23</p> <p>1 Bidell</p> <p>2 Q. How far down Miriam is 20 from the</p> <p>3 intersection of the T?</p> <p>4 A. Several houses down, six or seven,</p> <p>5 guessing. Maybe less.</p> <p>6 Q. If one were walking down Miriam toward</p> <p>7 Lafayette would 20 Miriam be on the left-hand side</p> <p>8 or the right-hand side?</p> <p>9 A. Left-hand side.</p> <p>10 Q. And this was a sale that was being</p> <p>11 observed by the Nassau County District Attorney's</p> <p>12 Office?</p> <p>13 A. That's correct.</p> <p>14 Q. And the informant at the time was</p> <p>15 working for the Nassau County District Attorney's</p> <p>16 Office, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. The individual who you now know to be</p> <p>19 Rashon or Reginald Lecator, had you known his</p> <p>20 identity prior to this sale?</p> <p>21 A. No, I did not.</p> <p>22 Q. And this sale occurred in</p> <p>23 approximately April of 2010?</p> <p>24 A. Yes, early April.</p> <p>25 Q. Did you ever make a connection between</p>	<p style="text-align: right;">25</p> <p>1 Bidell</p> <p>2 part we were able to see what was going on as we</p> <p>3 drove by.</p> <p>4 Q. But you were part of the observation</p> <p>5 team for this sale with the informant and who</p> <p>6 eventually became known to you as Rashon Lecator</p> <p>7 or Reginald Lecator, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. At any point in time either before or</p> <p>10 after the sale did either you or any of your team</p> <p>11 observe Rashon Lecator or Reginald Lecator either</p> <p>12 coming from or going to 31 Lafayette Avenue?</p> <p>13 A. During this sale?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. What is the next thing that occurs as</p> <p>17 far as the investigation into Mr. Lecator after</p> <p>18 the sale that you have informed us occurred in</p> <p>19 early April?</p> <p>20 A. The next thing was the informant</p> <p>21 somehow or another, whether he knew it already or</p> <p>22 he got it then, had the phone number of</p> <p>23 Mr. Lecator and he set up a deal to buy heroin</p> <p>24 directly from him skipping Sha, leaving Sha out of</p> <p>25 the deal. He dealt being directly with</p>

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<p style="text-align: right;">26</p> <p>1 Bidell</p> <p>2 Mr. Lecator.</p> <p>3 Q. Now, according to your information did</p> <p>4 Mr. Lecator work for Sha?</p> <p>5 A. According to our information, yes.</p> <p>6 Q. And do you know when the informant</p> <p>7 worked out this side deal with Mr. Lecator to deal</p> <p>8 directly with him?</p> <p>9 A. I don't know exactly when. But they</p> <p>10 had conversations on the -- April 14th was our</p> <p>11 next deal directly with Mr. Lecator, which took</p> <p>12 place at 31 Lafayette Avenue.</p> <p>13 MR. HORN: Could you just read that</p> <p>14 back.</p> <p>15 (A portion of the record was read.)</p> <p>16 Q. Were there any phone calls between</p> <p>17 your informant and Mr. Lecator between the first</p> <p>18 early April meeting or sale and this April 14th</p> <p>19 sale?</p> <p>20 A. Yes, there were. I don't have the</p> <p>21 dates though.</p> <p>22 Q. And those phone calls were monitored</p> <p>23 by the Nassau County District Attorney's Office?</p> <p>24 A. No, they were not.</p> <p>25 Q. Why not?</p>	<p style="text-align: right;">28</p> <p>1 Bidell</p> <p>2 Mr. Lecator, that was arranged by the Nassau</p> <p>3 County District Attorney's Office as far as</p> <p>4 producing money for that sale.</p> <p>5 A. That's correct.</p> <p>6 Q. And how much was that sale, how much</p> <p>7 heroin was that sale?</p> <p>8 A. I don't have that information with me.</p> <p>9 Q. If you went back to your office and</p> <p>10 wanted to how many heroin was purchased on</p> <p>11 April 14th, where would you look?</p> <p>12 A. In my arrest folder.</p> <p>13 Q. And you maintain an arrest folder for</p> <p>14 the investigation that was conducted into Reginald</p> <p>15 or Rashon Lecator?</p> <p>16 A. Yes.</p> <p>17 Q. And that would be all the way up until</p> <p>18 the actual arrest?</p> <p>19 A. That's correct.</p> <p>20 Q. When the April 14th sale was conducted</p> <p>21 were there any monitoring devices placed on your</p> <p>22 informant?</p> <p>23 A. Yes, there were.</p> <p>24 Q. What was placed on the informant?</p> <p>25 A. Audio and video equipment.</p>
<p style="text-align: right;">27</p> <p>1 Bidell</p> <p>2 A. Most of the time when you try and</p> <p>3 reach the target you're looking to speak with they</p> <p>4 don't pick up or they don't -- it's not where you</p> <p>5 can sit down and say let's call this guy. It</p> <p>6 takes quite a -- a numerous amount of time. It's</p> <p>7 just not convenient or conducive to continue other</p> <p>8 investigations while you're doing that.</p> <p>9 So we would normally let the informant</p> <p>10 arrange something. And if possible, we would try</p> <p>11 and, you know, once it's set, we would try and</p> <p>12 then sometimes record a call if it's possible and</p> <p>13 if it's not we'll just let the deal go.</p> <p>14 Q. Do you know if you recorded any</p> <p>15 telephone calls between the informant and</p> <p>16 Mr. Lecator prior to the April 14th sale?</p> <p>17 A. I don't believe so.</p> <p>18 Q. And you indicated that a sale was</p> <p>19 arranged for April 14th between Mr. Lecator and</p> <p>20 the informant?</p> <p>21 A. That's correct.</p> <p>22 Q. The informant's name has never been</p> <p>23 released, correct?</p> <p>24 A. Correct.</p> <p>25 Q. The sale on April 14th conducted by</p>	<p style="text-align: right;">29</p> <p>1 Bidell</p> <p>2 Q. Did the Nassau County District</p> <p>3 Attorney's Office investigations bureau secure any</p> <p>4 audio recordings of this sale of April 14th?</p> <p>5 A. Yes.</p> <p>6 Q. And did they obtain any video</p> <p>7 recordings of this sale?</p> <p>8 A. Yes.</p> <p>9 Q. Where did the actual sale take place?</p> <p>10 A. Inside of 31 Lafayette Avenue,</p> <p>11 Hempstead.</p> <p>12 Q. How long did this sale take place?</p> <p>13 Ballpark.</p> <p>14 A. I'm guessing anywhere from five to ten</p> <p>15 minutes. You know, somewhere around there, I</p> <p>16 guess, yes.</p> <p>17 Q. During the course of the sale was the</p> <p>18 merchandise weighed?</p> <p>19 A. No.</p> <p>20 Q. Was it tested in any way?</p> <p>21 A. No. By the CI? By the informant?</p> <p>22 Q. By the informant.</p> <p>23 A. No.</p> <p>24 Q. Do you recall generally what took</p> <p>25 place during the sale?</p>

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Bidell

A. Just generally the -- just generally CI give him U.S. currency and Reginald Lecator gave him a bag containing alleged heroin. I don't recall how much. All the sales were for a couple of hundred dollars. I don't remember exactly how much.

Q. And this particular sale, do you have any recollection of observing the video or listening to the audio of this sale?

A. Yes.

Q. And going back to the video, can you tell me when the video starts, what it depicts and when it ends?

A. I could not off the top of my head. Other than there was an exchange of currency and then Mr. Lecator gave him a bag containing alleged heroin.

Q. Was the video color?

A. It's color, but they're very dark and grainy. Not a lot of light in the house.

Q. And the audio, you listened to that as well, correct?

A. Yes.

Q. While listening to the audio did you

Bidell

hear any, for lack of a better term, small talk between Mr. Lecator and the informant?

A. Yes.

Q. Was there more than just a few minutes of small talk?

A. There was small talk. You know, I don't remember exactly what, but there's usually small talk through the entire deal.

Q. Did the informant at any point in time use any of the product that he was purchasing during this sale on April 14th?

A. No.

Q. As far as your investigation goes, what was the next step?

A. A second buy was scheduled for April 15th, 2010, and the same process occurred at the same location.

Q. Now, I understand you don't remember the exact amounts. The amounts that were purchased, were they amounts that would be indicative of personal use or would they be amounts that would be indicative that the informant was going to resell the product?

A. Resell the product.

Bidell

Q. Now, the second sale, that was set up on the 15th.

A. That's correct.

Q. When was it set up?

A. On the 15th.

Q. Via phone call?

A. Yes.

Q. And did you monitor that phone call?

A. No, we did not.

Q. And when you say a phone call, you were talking about a phone call between your informant and Mr. Lecator?

A. That is correct.

Q. Did a sale on April 15th come to fruition?

A. Yes.

Q. And was that between the informant and Mr. Lecator?

A. That's correct.

Q. And was that at 31 Lafayette Avenue?

A. That's correct.

Q. And was Mr. Lecator outfitted with video and audio equipment from the Nassau County District Attorney's Office?

Bidell

A. No. The informant was outfitted with that.

Q. I'm sorry, did I say Mr. Lecator?

A. Yes.

Q. Let me rephrase the question. Was the informant equipped with video and audio monitoring equipment during this sale on April 15th?

A. That's correct.

Q. Did you ever observe the video that was produced as a result of this April 15th buy?

A. I did.

Q. Can you tell me what was depicted in that video?

A. Similar to the previous one. It was currency exchange for a bag containing the alleged heroin.

Q. And the audio?

A. The audio was good quality.

Q. By no means am I attempting to ascertain the specific nature of the video recording device or the audio, but my question to you is, the video, when does it begin?

A. When we have the CI. Before the deal is set or the buy actually takes place, we have

<p style="text-align: right;">34</p> <p>1 Bidell</p> <p>2 the informant with us. We wire him up. And when</p> <p>3 he leaves us the equipment is turned on.</p> <p>4 Q. And actually while you're wiring him</p> <p>5 up you'll be able to see on your own monitors what</p> <p>6 is being captured through that video device,</p> <p>7 correct?</p> <p>8 A. I don't want to get into details of</p> <p>9 it, but no, that's not correct. It's not a live</p> <p>10 feed.</p> <p>11 Q. OK. So you don't have real-time</p> <p>12 depiction of the video recording.</p> <p>13 A. Not in this case.</p> <p>14 Q. Now, the video recording though begins</p> <p>15 while you're still in the presence of the</p> <p>16 informant, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And that video recording will continue</p> <p>19 until it is turned off by one of the</p> <p>20 investigators, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And in this case on the 15th the video</p> <p>23 began in the presence of investigators, captured</p> <p>24 him going to the sale, coming back from the sale</p> <p>25 until it was turned off by one of the investigators,</p>	<p style="text-align: right;">36</p> <p>1 Bidell</p> <p>2 can you tell me what field is captured within that</p> <p>3 video if one were standing in a room and there</p> <p>4 were no obstructions in front of that video</p> <p>5 device?</p> <p>6 A. It all depends on that specific moment</p> <p>7 or how the informant is wearing the device or what</p> <p>8 angle the device is at. So it can vary from one</p> <p>9 extreme to the other. You could end up looking at</p> <p>10 the floor. You could end up looking at the</p> <p>11 ceiling. You could look two feet in front of you</p> <p>12 or you could see an entire room. It totally</p> <p>13 fluctuates as the person is wearing the device.</p> <p>14 Q. But if pointed straight ahead in a</p> <p>15 room, you will be able to pick up the details of</p> <p>16 the room in that video device.</p> <p>17 A. If pointed straight ahead, yes. If</p> <p>18 there's enough lighting.</p> <p>19 Q. And this video device was the same for</p> <p>20 both days, the 15th and the 14th, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Maybe not the exact same device, but</p> <p>23 the same type of device.</p> <p>24 A. That's correct.</p> <p>25 Q. After this second sale on April 15th</p>
<p style="text-align: right;">35</p> <p>1 Bidell</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that would be the same for the</p> <p>5 April 14th --</p> <p>6 A. That's correct.</p> <p>7 Q. -- sale, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Now, the audio, the audio, was it</p> <p>10 similar where there was no real-time feed, but you</p> <p>11 got it later?</p> <p>12 A. Sometimes we would use an audio device</p> <p>13 that we could hear live, real-time.</p> <p>14 Q. And in this circumstances were you</p> <p>15 hearing real-time?</p> <p>16 A. Yes.</p> <p>17 Q. As far as the video device, these are</p> <p>18 produced at criminal trials, correct? By the</p> <p>19 prosecutors as evidence, correct?</p> <p>20 MS. PETILLO: Can we go off the</p> <p>21 record.</p> <p>22 MR. HORN: Sure.</p> <p>23 (Discussion off the record.)</p> <p>24 Q. I would like to ask you, regarding the</p> <p>25 video equipment that was utilized on April 14th,</p>	<p style="text-align: right;">37</p> <p>1 Bidell</p> <p>2 what was the next step of your investigation?</p> <p>3 A. Another sale was arranged for</p> <p>4 April 19th.</p> <p>5 Q. I'm sorry, I don't know whether I</p> <p>6 asked you this. The April 15th sale was also at</p> <p>7 31 Lafayette Avenue, correct?</p> <p>8 A. Inside 31 Lafayette Avenue, correct.</p> <p>9 Q. Was it in a different location than</p> <p>10 the April 14th sale within 31 Lafayette Avenue?</p> <p>11 A. I don't believe so.</p> <p>12 Q. Now, the April 19th sale, who set that</p> <p>13 up? The informant?</p> <p>14 A. The informant, correct.</p> <p>15 Q. And that was done via telephone?</p> <p>16 A. Yes.</p> <p>17 Q. That was a telephone call that you</p> <p>18 monitored or not?</p> <p>19 A. Not monitored.</p> <p>20 Q. Did that sale ever come to fruition?</p> <p>21 A. Yes, it did.</p> <p>22 Q. Did that sale take place at</p> <p>23 31 Lafayette Avenue?</p> <p>24 A. That's correct.</p> <p>25 Q. Was that sale monitored via video and</p>

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<p style="text-align: right;">38</p> <p>1 Bidell</p> <p>2 audio by members of the investigations bureau of</p> <p>3 the Nassau County District Attorney's Office?</p> <p>4 A. The video was monitored after the sale</p> <p>5 took place.</p> <p>6 Q. But it was similar to the April 14th</p> <p>7 and 15th sales where -- real-time audio postsale</p> <p>8 monitoring of the video.</p> <p>9 A. That's correct.</p> <p>10 Q. And the April 19th sale, did that</p> <p>11 occur within the same location of 31 Lafayette</p> <p>12 Avenue as the April 14th and 15th sales?</p> <p>13 A. Yes.</p> <p>14 Q. As far as the time frame for the</p> <p>15 April 15th sale, was it similar to the April 14th</p> <p>16 sale where it was approximately five to ten</p> <p>17 minutes?</p> <p>18 A. I can't recall off the top of my head.</p> <p>19 Q. How about the April 19th sale?</p> <p>20 A. Again, I don't recall exactly.</p> <p>21 Q. Without remembering exactly how long</p> <p>22 each sale, each of these two sales were, and I'm</p> <p>23 speaking of the 15th and 19th, were the sales</p> <p>24 taking more time? Were these guys kind of making</p> <p>25 more small talk or were they becoming much more</p>	<p style="text-align: right;">40</p> <p>1 Bidell</p> <p>2 female, both male and female, but I don't recall</p> <p>3 exactly on what dates they were present.</p> <p>4 Q. Did you ever identify these male or</p> <p>5 females that were present?</p> <p>6 A. No, they didn't participate in the</p> <p>7 sale, so we weren't interested in them really.</p> <p>8 Q. When you say present, I want to make</p> <p>9 sure, are you talking about in the same room, in</p> <p>10 the same edifice, on the same property? Something</p> <p>11 else?</p> <p>12 A. In the same room.</p> <p>13 Q. Have you ever identified any of these</p> <p>14 individuals? I know you said they weren't</p> <p>15 involved, but did you ever identify them?</p> <p>16 A. I did not.</p> <p>17 Q. Do you know whether they were ever</p> <p>18 identified by the Nassau County District</p> <p>19 Attorney's Office investigations bureau?</p> <p>20 A. They were not.</p> <p>21 Q. Do you know whether a determination</p> <p>22 was ever made whether any of the individuals</p> <p>23 depicted in the video and audio of either the</p> <p>24 sales of the April 14th, 15th or 19th resided at</p> <p>25 31 Lafayette Avenue?</p>
<p style="text-align: right;">39</p> <p>1 Bidell</p> <p>2 expedited transfers?</p> <p>3 A. I haven't viewed the tapes in almost</p> <p>4 two years. So I don't really recall.</p> <p>5 Q. And those are tapes that you would</p> <p>6 have had -- withdrawn.</p> <p>7 A. When I say tapes I mean CDs.</p> <p>8 Q. I age myself, am doing that</p> <p>9 constantly.</p> <p>10 The CDs that contain the video footage</p> <p>11 of the April 14th, 15th and 19th sales, those</p> <p>12 would be maintained in your arrest folder that you</p> <p>13 had indicated earlier?</p> <p>14 A. That's correct.</p> <p>15 Q. And the same would be true for the</p> <p>16 audio recordings?</p> <p>17 A. Correct.</p> <p>18 Q. During the April 14th sale was there</p> <p>19 anyone else present other than Mr. Lecator and the</p> <p>20 informant?</p> <p>21 MS. PETILLO: I'm sorry, what date</p> <p>22 sale?</p> <p>23 MR. HORN: April 14th.</p> <p>24 A. I don't recall. I know out of the</p> <p>25 three sales other people were present, male,</p>	<p style="text-align: right;">41</p> <p>1 Bidell</p> <p>2 A. Do I know if they ever resided there,</p> <p>3 the people in the video?</p> <p>4 Q. Was it ever determined that any of</p> <p>5 these individuals that are depicted in the video</p> <p>6 and audio resided at 31 Lafayette Avenue? And I'm</p> <p>7 talking about the video and audio from either</p> <p>8 April 14th, 15th or 19th.</p> <p>9 A. They were never identified. So I</p> <p>10 don't know where they lived.</p> <p>11 Q. When I'm saying identified, I just</p> <p>12 want to make sure. You might not have known their</p> <p>13 name, but you knew they lived there. That's the</p> <p>14 question I'm asking.</p> <p>15 A. It was an assumption of mine that, um,</p> <p>16 at least that I can recall at least one female</p> <p>17 resided there. From whatever conversation was</p> <p>18 going on, it appeared that the female resided</p> <p>19 there.</p> <p>20 Q. And was that a female that you later</p> <p>21 learned her identity to be Stephanie Swan?</p> <p>22 A. No. I don't know a Stephanie Swan off</p> <p>23 the top of my head.</p> <p>24 Q. After the sale on April 19th, what was</p> <p>25 the next thing that happened in your</p>

11 (Pages 38 to 41)

<p style="text-align: right;">42</p> <p>1 Bidell</p> <p>2 investigation?</p> <p>3 A. We then spoke to an ADA to obtain a</p> <p>4 search warrant.</p> <p>5 Q. And when you say we, who are you</p> <p>6 talking about?</p> <p>7 A. Myself.</p> <p>8 Q. With whom did you speak?</p> <p>9 A. You know, I'm not a hundred percent</p> <p>10 sure. I believe it was David Arias, ADA Arias,</p> <p>11 but I'm not a hundred percent sure.</p> <p>12 Q. Can you spell the name?</p> <p>13 A. I don't know how to spell his name.</p> <p>14 A-r-i-a-s? But I'm not sure. David is his first</p> <p>15 name.</p> <p>16 Q. Is he still with the Nassau County</p> <p>17 District Attorney's Office?</p> <p>18 A. Yes.</p> <p>19 Q. Why did you go speak to him?</p> <p>20 A. To obtain a search warrant for</p> <p>21 31 Lafayette Avenue.</p> <p>22 Q. So he could actually draft the request</p> <p>23 for a search warrant?</p> <p>24 A. Correct.</p> <p>25 Q. What did you say to Mr. Arias?</p>	<p style="text-align: right;">44</p> <p>1 Bidell</p> <p>2 Q. Oh, it does?</p> <p>3 A. Yes.</p> <p>4 Q. What did Mr. Arias say in response to</p> <p>5 receiving this paperwork you've mentioned and</p> <p>6 watching the video and listening to the audio?</p> <p>7 A. That he would request the, um, he</p> <p>8 would do the paperwork for the search warrant.</p> <p>9 Q. Did you submit an affidavit to</p> <p>10 Mr. Arias or did he draft one up for you based on</p> <p>11 the information you gave him or something else?</p> <p>12 A. He drafted it.</p> <p>13 Q. Did you review that affidavit?</p> <p>14 A. I did.</p> <p>15 Q. Did you sign that affidavit?</p> <p>16 A. I did.</p> <p>17 Q. And were any modifications made at any</p> <p>18 point in time to the affidavit you were first</p> <p>19 given other than your signature being added?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Was the content of that affidavit</p> <p>22 correct?</p> <p>23 A. I believe so.</p> <p>24 Q. Now, you indicated that you went to</p> <p>25 Mr. Arias and said in words or substance, you</p>
<p style="text-align: right;">43</p> <p>1 Bidell</p> <p>2 A. I informed him of the information with</p> <p>3 the buys, concerning the buys, how the whole</p> <p>4 investigation went as I previously discussed with</p> <p>5 you.</p> <p>6 Q. Did you give him any documentation</p> <p>7 during this discussion regarding your attempt to</p> <p>8 obtain a search warrant?</p> <p>9 A. I gave him the paperwork, yes.</p> <p>10 Q. What paperwork?</p> <p>11 A. Vouchers, lab requests, I believe the</p> <p>12 DVDs concerning the buys. Also discussed with</p> <p>13 him, we had buys as well. Like I said, the two</p> <p>14 houses we believed were connected, 20 Miriam and</p> <p>15 31 Lafayette, and gave him information regarding</p> <p>16 buys we had at that location at well.</p> <p>17 Q. Did you show any video or audio to</p> <p>18 Mr. Arias?</p> <p>19 A. Yes.</p> <p>20 Q. Were you present when he watched or</p> <p>21 listened to either one of those?</p> <p>22 A. Yes.</p> <p>23 Q. The video has no audio on it, though,</p> <p>24 correct?</p> <p>25 A. Yes, it does.</p>	<p style="text-align: right;">45</p> <p>1 Bidell</p> <p>2 know, we're looking to obtain a search warrant for</p> <p>3 20 Miriam and 31 Lafayette Avenue.</p> <p>4 Did you ever identify any individuals</p> <p>5 whom you were targeting?</p> <p>6 A. Yes, we did.</p> <p>7 Q. And who were those individuals?</p> <p>8 A. Rashon Lechter/Lecator.</p> <p>9 Q. The individual you identified as Sha</p> <p>10 or was known to you as Sha, was he a target of</p> <p>11 these search warrants?</p> <p>12 A. Well, when you talk about search -- I</p> <p>13 was getting -- if I can just backtrack a little.</p> <p>14 Somewhere between the actual buys and the</p> <p>15 obtaining of the search warrant it came to our</p> <p>16 attention that not only the Nassau DA's office had</p> <p>17 buys into 20 Miriam, but so did the Hempstead PD</p> <p>18 and so did Nassau County narcotics.</p> <p>19 So it was agreed upon that Hempstead</p> <p>20 PD would obtain the search warrant for 20 Miriam</p> <p>21 and we would obtain the search warrant for</p> <p>22 31 Lafayette Avenue.</p> <p>23 Q. What information did you have to give</p> <p>24 Mr. Arias regarding 20 Miriam in furtherance of</p> <p>25 obtaining a search warrant for that premises?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 Bidell</p> <p>2 A. Like I said, we didn't obtain the</p> <p>3 search warrant there. That was obtained by</p> <p>4 Hempstead PD. But I gave him, you know, we had</p> <p>5 buys at that location as well.</p> <p>6 Q. Who obtained the search warrant for</p> <p>7 31 Lafayette?</p> <p>8 A. I did.</p> <p>9 MR. HORN: Off the record.</p> <p>10 (Discussion off the record.)</p> <p>11 Q. Directing your attention to your</p> <p>12 conversation with Mr. Arias, did you ever explain</p> <p>13 to him what the purpose that you sought to achieve</p> <p>14 for the search warrant at 31 Lafayette?</p> <p>15 MS. PETILLO: OK, I'm going to object</p> <p>16 to specifics of conversations as it goes to</p> <p>17 their strategy with respect to the -- if you</p> <p>18 want to establish that they had a</p> <p>19 conversation prior to the search warrant</p> <p>20 being obtained, but I'm going to object to</p> <p>21 the specifics of the conversation as it goes</p> <p>22 to the strategy behind how they were</p> <p>23 handling this particular prosecution,</p> <p>24 because it did I believe at some point</p> <p>25 become a criminal prosecution with respect</p>	<p style="text-align: right;">48</p> <p>1 Bidell</p> <p>2 Q. What kind of evidence?</p> <p>3 A. Any drugs, drug paraphernalia, if any</p> <p>4 weapons were there, currency. Along those lines.</p> <p>5 MR. HORN: Could you just read back</p> <p>6 the response.</p> <p>7 (A portion of the record was read.)</p> <p>8 Q. In your last answer you indicated that</p> <p>9 you were seeking evidence that may enhance your</p> <p>10 case. Against whom? Case against whom?</p> <p>11 A. Against Lecator.</p> <p>12 Q. Anyone else?</p> <p>13 A. No.</p> <p>14 Q. During your investigation prior to</p> <p>15 speaking with Mr. Arias did you ever determine</p> <p>16 whether Mr. Lecator resided at 31 Lafayette?</p> <p>17 A. I'm sorry. Could you repeat?</p> <p>18 Q. Prior to speaking with Mr. Arias did</p> <p>19 you ever make a determination that Mr. Lecator</p> <p>20 resided at 31 Lafayette?</p> <p>21 A. Yes.</p> <p>22 Q. What was that based on?</p> <p>23 A. It was based on the informant telling</p> <p>24 us that and as well on May 10th we went to that</p> <p>25 location, myself and two other investigators,</p>
<p style="text-align: right;">47</p> <p>1 Bidell</p> <p>2 to individuals at the home.</p> <p>3 MR. HORN: What's the privilege that</p> <p>4 you're asserting?</p> <p>5 MS. PETILLO: It goes to the strategy</p> <p>6 that the DA's office utilized to determine</p> <p>7 how to prosecute against the individuals of</p> <p>8 the home, how they would ultimately</p> <p>9 prosecute their case. I mean, it all went</p> <p>10 into building a case against these other</p> <p>11 individuals who are not parties to this</p> <p>12 lawsuit.</p> <p>13 MR. HORN: My question though is</p> <p>14 directed toward not the prosecution of</p> <p>15 individuals. Mine is he's speaking of</p> <p>16 obtaining a search warrant and I want to</p> <p>17 know why he wanted a search warrant. I'll</p> <p>18 even word it that way.</p> <p>19 BY MR. HORN:</p> <p>20 Q. Why did you want a search warrant of</p> <p>21 31 Lafayette?</p> <p>22 THE WITNESS: Answer?</p> <p>23 MS. PETILLO: Yes.</p> <p>24 A. To obtain evidence that would enhance</p> <p>25 our case.</p>	<p style="text-align: right;">49</p> <p>1 Bidell</p> <p>2 under a ruse and knocked on that door and</p> <p>3 determined he lived there.</p> <p>4 Q. When did your conversation with</p> <p>5 Mr. Arias take place?</p> <p>6 A. I'm not sure of the exact date.</p> <p>7 Somewhere between the 19th of April and May 5th.</p> <p>8 Q. So when you spoke to Mr. Arias the</p> <p>9 determination that Mr. Lecator resided at 31</p> <p>10 Lafayette was based on the representations of the</p> <p>11 informant as well as his physical presence at that</p> <p>12 location on April 14th, 15th and 19th, correct?</p> <p>13 A. Correct. And we had observed him at</p> <p>14 that location as well.</p> <p>15 Q. When had you observed him at that</p> <p>16 location?</p> <p>17 A. Between the 14th and May 5th, between</p> <p>18 the 14th of April and May 5th we had done several</p> <p>19 surveillances of the location.</p> <p>20 Q. Now, you indicated there came a point</p> <p>21 in time where you approached 31 Lafayette with</p> <p>22 some sort of ruse.</p> <p>23 A. Yes.</p> <p>24 Q. And knocked on the door?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">50</p> <p>1 Bidell</p> <p>2 Q. Now when you say you, are you talking</p> <p>3 about you personally?</p> <p>4 A. Yes.</p> <p>5 Q. Who were you with?</p> <p>6 A. I believe Detective Investigator Walsh</p> <p>7 and Maher. M-a-h-e-r.</p> <p>8 Q. Detective Investigator Walsh, is that</p> <p>9 a Nassau County detective that's assigned to the</p> <p>10 investigations bureau?</p> <p>11 A. He's a special investigator as myself,</p> <p>12 yes, assigned there as well, yes.</p> <p>13 Q. Does he work for the District</p> <p>14 Attorney's Office or --</p> <p>15 A. Yes.</p> <p>16 Q. And Maher?</p> <p>17 A. The same.</p> <p>18 MR. HORN: Just off the record.</p> <p>19 (Discussion off the record.)</p> <p>20 Q. And what was this ruse?</p> <p>21 A. Well, just backtracking a little bit,</p> <p>22 on May 10th when I did my observations, I observed</p> <p>23 a second mailbox. I observed two mailboxes in</p> <p>24 front of the house. So I wanted to ensure that or</p> <p>25 decide whether it was a one-family house or a</p>	<p style="text-align: right;">52</p> <p>1 Bidell</p> <p>2 name?</p> <p>3 A. I do not recall. It was not his</p> <p>4 sister, I know that.</p> <p>5 Q. The individual who identified herself</p> <p>6 as Rashondra Lecator.</p> <p>7 A. It was not her.</p> <p>8 Q. Were you present for the arrests at</p> <p>9 31 Lafayette?</p> <p>10 A. Yes.</p> <p>11 MR. HORN: Off the record.</p> <p>12 (Discussion off the record.)</p> <p>13 Q. You indicated that you had made an</p> <p>14 observation that there were more than one</p> <p>15 mailbox --</p> <p>16 A. Yes.</p> <p>17 Q. -- at the premises.</p> <p>18 When did you make that observation?</p> <p>19 A. On the 10th of May.</p> <p>20 Q. How did you make that observation?</p> <p>21 A. Like I said, the area of 20 Miriam is</p> <p>22 a thriving crack house and had scouts or spies or</p> <p>23 whatever looking out for police up and down the</p> <p>24 block all around the corner of 20 Miriam. So you</p> <p>25 really couldn't sit. We were trying to watch</p>
<p style="text-align: right;">51</p> <p>1 Bidell</p> <p>2 two-family house. So we knocked on the door on</p> <p>3 the 11th, May 11th. We knocked on the door and</p> <p>4 said that there was a report of children crying.</p> <p>5 You know, we just wanted to make sure everything</p> <p>6 was OK.</p> <p>7 Q. And as far as how you identified</p> <p>8 yourself, do you recall what you said to the</p> <p>9 individual who answered the door?</p> <p>10 A. Yes, we're from the -- detectives from</p> <p>11 the DA's office, or special investigators. I</p> <p>12 don't remember detective exactly or special</p> <p>13 investigator exactly.</p> <p>14 Q. Who answered the door?</p> <p>15 A. That was Rashon's sister. She</p> <p>16 identified herself as Rashondra Lecator.</p> <p>17 Q. There came a point in time when</p> <p>18 arrests were made at 31 Lafayette, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Who was arrested?</p> <p>21 A. Rashon Lecator and during the</p> <p>22 investigation, during the search warrant, one of</p> <p>23 the females inside the residence was arrested as</p> <p>24 well.</p> <p>25 Q. And do you know that individual's</p>	<p style="text-align: right;">53</p> <p>1 Bidell</p> <p>2 31 Lafayette, and you would have to sit down the</p> <p>3 block quite a bit on an angle to the house and try</p> <p>4 to identify who was coming and going, if you could</p> <p>5 see if any kind of delivery, drug delivery, any</p> <p>6 kind of activity, what we could observe.</p> <p>7 And from that vantage point we always</p> <p>8 only saw the one or I only saw the one mailbox.</p> <p>9 And when you drove by you really didn't want to</p> <p>10 look at that location because you didn't want</p> <p>11 someone to lock on with you and then they would</p> <p>12 know for sure you were the police.</p> <p>13 So there came a day on May 10th that I</p> <p>14 was able to look straight over. There was no one</p> <p>15 out in the front of the house and I observed a</p> <p>16 second mailbox that was -- from where I was it was</p> <p>17 behind shrubs. I really couldn't see it.</p> <p>18 Q. To your knowledge were you the first</p> <p>19 amongst your team or squad to make that</p> <p>20 observation?</p> <p>21 A. Yes.</p> <p>22 Q. What did you do after making that</p> <p>23 observation?</p> <p>24 A. I then, um, later that day I sent my</p> <p>25 informant back to the location. Not to make a</p>

14 (Pages 50 to 53)

54

1 Bidell

2 buy, but just to try and get some small talk and

3 obtain any information he could to find out if it

4 was a two-family house or if it was a one-family

5 house.

6 Q. And did he go to the premises for that

7 purpose?

8 A. He did.

9 Q. And was he wired when he went?

10 A. No. He wasn't, like I said, he wasn't

11 making any kind of a drug purchase.

12 Q. Did there come a point in time where

13 he returned and relayed any information regarding

14 what he discovered?

15 A. Yes. He believed it was a one-family

16 house from what he could tell.

17 Q. What did he say specifically to you in

18 that regard?

19 A. I don't remember the exact words, but

20 just his feelings were that from what he --

21 whoever he spoke to, a female at the location,

22 that he was under the impression it was one-family

23 house.

24 Q. I'm sorry, and he spoke to a female at

25 the location?

55

1 Bidell

2 A. Correct.

3 Q. Did you ever identify who this female

4 was that he spoke with?

5 A. No, I didn't.

6 Q. Did he identify her?

7 A. No, he did not.

8 Q. Did he say whether she lived there or

9 not?

10 A. Yes, she did. He had seen her. I

11 don't think he knew her name, but he had seen her

12 from previous times.

13 Q. What was the ruse that he used to go

14 to that location on the 10th?

15 A. He was looking for Rashon Lecator.

16 MS. PETILLO: Objection. I don't

17 think there's been testimony that the CI

18 went to the location on the 10th.

19 Did the CI go on the 10th.

20 THE WITNESS: Yes. I sent him there.

21 MS. PETILLO: OK, and then you went on

22 the 11th?

23 THE WITNESS: No, I knocked on the

24 door on the 11th, correct.

25 MS. PETILLO: I apologize.

56

1 Bidell

2 Q. Why did you want to determine whether

3 it was a one- or two-family house?

4 A. Well, we wanted to make sure -- we had

5 already had the search warrant. We had the search

6 warrant for the whole house.

7 Q. Why did you send him there to

8 determine whether it was a one- or two-family?

9 A. Because we didn't want to go, I mean,

10 if there was a second family on another floor, I

11 didn't want to enter that location.

12 Q. When you say you didn't want to enter,

13 you didn't want whoever --

14 A. The search warrants conducted at that

15 location.

16 MS. PETILLO: You have to let him ask

17 the question first.

18 THE WITNESS: I'm sorry.

19 MS. PETILLO: Do you want to get the

20 question out?

21 Q. And the reason why you sent him there

22 to make the determination whether it was a one- or

23 two-family is you didn't want the search warrant

24 executed in an area of the house that wasn't the

25 subject of your investigation if it was subdivided

57

1 Bidell

2 into two families, correct?

3 A. I didn't want, right. If it was a

4 two-family house, a clear two-family house, I

5 didn't want a search warrant executed in that

6 house, in that second house.

7 Q. Second part of the house unrelated to

8 your investigation.

9 A. Well, second -- if it was two separate

10 residences I didn't want it in that residence.

11 MS. PETILLO: In that second

12 residence.

13 A. That second residence that would not

14 have been involved.

15 Q. Specifically what did your informant

16 tell you?

17 A. Again, I don't remember exact words,

18 but his feel coming back after speaking with this

19 female that it was a one-family house from what he

20 could determine.

21 Q. Was he definitive about that?

22 A. He was definitive as he could be.

23 Q. You eventually went to see for

24 yourself though, correct, on May 11th?

25 A. Correct.

15 (Pages 54 to 57)

Bidell

Q. Was that because he wasn't definitive?

A. I just wanted to, you know, I wanted to verify myself. I couldn't — he was saying one thing, but, you know, I don't just go with everything he says. I try and verify if I could.

Q. Did he indicate to you whether he was positive that it was a one-family house, that from what he could gather it was a one-family house, something else?

A. It was more from what he could gather it was a one-family house. And I asked him, you know, not even that time. I had asked him long before while the buys were going on had he ever been upstairs in that house and he said no.

Q. Had he ever indicated to you what the layout of the house was?

A. On the first floor.

Q. Yes.

A. Yes.

Q. Did he ever indicate to you that he ever observed a stairway going to the second floor?

A. No, and I had asked him that.

Q. When did you ask him that?

Bidell

A. During this time on the 10th.

Q. During this time where you were trying to ascertain whether it was a one-family or a two-family?

A. Correct.

Q. Did you make any notes regarding your conversation with your informant after he returned from 31 Lafayette on May 10th?

A. No.

Q. Was there anything that you have in your file or somewhere else in your workplace where you could go and read it to refresh your recollection as to what the informant based his feeling that it was a one-family house?

A. No.

Q. There came a point in time where you decided yourself to go and make your own determination on May 11th, correct?

A. Correct.

Q. And you indicated that you went with Detective Maher and Detective Walsh, correct?

A. Correct.

Q. And you went up to the front door?

A. Correct.

Bidell

Q. And did you knock, ring a doorbell, something else?

A. I believe knocked.

Q. Who spoke to the individual who answered the door?

A. I did.

Q. At this point in time when you were standing in the door were you able to see any mailboxes?

A. Yes.

Q. How many?

A. Two.

Q. Did they have names on them?

A. Not that I recall.

Q. After the door opened who spoke first?

A. I don't recall if I spoke first or the woman spoke first. I don't recall.

Q. But you indicated yourselves to be investigators with the DA's office and that you were here on a complaint of a crying child; is that correct?

A. Correct.

Q. And what, if anything, did the individual say after hearing that?

Bidell

A. She said there was no crying child there.

Q. What, if anything, did you say in response to that?

A. I asked if I could come in. She said yes.

Q. And did you go in?

A. Yes.

Q. And what, if anything, happened after you entered?

A. I just said that there was a report of like a crying child. It could be nothing, it could be someone's TV. Do you mind if I ask you a few questions? And she said, Yes, go ahead. And I asked her who resided at the location.

During this conversation another woman came over, and the first woman like I said identified herself as Rashondra Lecator. The second woman refused to identify herself.

Q. What did this other woman look like?

A. I just remember being female, black, and I put her anywhere over, I guess older than 25 to thirty. She was older than. I don't know exactly how old.

<p style="text-align: right;">62</p> <p>1 Bidell</p> <p>2 Q. Was she thin, heavy, something else?</p> <p>3 A. She was not thin. That I recall. She</p> <p>4 was not thin.</p> <p>5 Q. Would you say she was above or below</p> <p>6 five six?</p> <p>7 A. I really don't recall.</p> <p>8 Q. When you first entered the house with</p> <p>9 the woman who answered the door, where did you go?</p> <p>10 A. I stood right inside the doorway.</p> <p>11 Q. Did all three of you come into the</p> <p>12 house?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have this conversation with</p> <p>15 her while you were standing? Did you sit down,</p> <p>16 something else?</p> <p>17 A. We stood. And after I got the</p> <p>18 information from her about who resided there, I</p> <p>19 asked her who lived there. She told me that her</p> <p>20 brother lived there, Rashon. I believe she said</p> <p>21 that her child lived there. I forget the name of</p> <p>22 the child.</p> <p>23 She said that this woman resided</p> <p>24 there. She said that there was a male that</p> <p>25 resided there. She could only give me the first</p>	<p style="text-align: right;">64</p> <p>1 Bidell</p> <p>2 A. I don't recall seeing the child, but</p> <p>3 what I did see is there was a small toddler's bed</p> <p>4 approximately six to eight feet away from the</p> <p>5 front door. Right like in the middle of the room</p> <p>6 type of thing.</p> <p>7 Q. Did you ever ask in sum or substance</p> <p>8 whether there were any other children other than</p> <p>9 the one she mentioned who resided at the premises?</p> <p>10 A. No, I did not.</p> <p>11 Q. Why not?</p> <p>12 A. I wasn't really interested in the</p> <p>13 children too much. You know, when I saw that bed,</p> <p>14 I made a mental note of the bed just in case of an</p> <p>15 entry with a search warrant. She told me like I</p> <p>16 said she had a child. She didn't mention any</p> <p>17 others, so...</p> <p>18 Q. Did you ever see any stairs going to</p> <p>19 the second floor?</p> <p>20 A. I didn't see any from where I was</p> <p>21 standing. I asked if we could just take a quick</p> <p>22 look around and she said yes. And she walked us</p> <p>23 straight through to the kitchen. I didn't see any</p> <p>24 stairs at that time. But I didn't go into the</p> <p>25 room. I didn't open any doors. I was looking for</p>
<p style="text-align: right;">63</p> <p>1 Bidell</p> <p>2 name of the male. She didn't know his last name.</p> <p>3 Q. What was the first name that she gave</p> <p>4 you?</p> <p>5 A. I don't recall.</p> <p>6 Q. Did you write that down in a memo book</p> <p>7 or something like that?</p> <p>8 A. I did.</p> <p>9 Q. And that would be contained in your</p> <p>10 arrest file?</p> <p>11 A. Yes.</p> <p>12 Q. Were any of you wired in any fashion</p> <p>13 when you entered the house?</p> <p>14 A. No. She also mentioned Theresa</p> <p>15 resided there, and she said that there was another</p> <p>16 female black that lived on the second floor and</p> <p>17 she didn't know her name.</p> <p>18 Q. Did she ever indicate there were any</p> <p>19 children on the second floor?</p> <p>20 A. She did not, no.</p> <p>21 Q. Did you ever ask?</p> <p>22 A. No.</p> <p>23 Q. And at any point in time during this</p> <p>24 conversation did you ever see the child she said</p> <p>25 that resided there?</p>	<p style="text-align: right;">65</p> <p>1 Bidell</p> <p>2 a staircase, but I didn't observe one. We went</p> <p>3 right through to the kitchen.</p> <p>4 And I said Theresa, is Theresa home or</p> <p>5 this other woman, are they home? And she said,</p> <p>6 yes, and she opened the kitchen door. She said</p> <p>7 knock on that door. She pointed to a door and I</p> <p>8 knocked on that door and Theresa answered the</p> <p>9 door.</p> <p>10 MR. HORN: Off the record.</p> <p>11 (Discussion off the record.)</p> <p>12 Q. I would like to show you what has been</p> <p>13 previously marked as Plaintiff's Exhibit 1 and it</p> <p>14 was marked such on March 8, 2012.</p> <p>15 I ask you if you recognize what's</p> <p>16 depicted in that photograph.</p> <p>17 A. Yes, it's the photo of the front of</p> <p>18 31 Lafayette Avenue.</p> <p>19 Q. And I just ask you to take a look to</p> <p>20 the left and the right of that photograph. Do you</p> <p>21 see what appears to be mailboxes?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Are those the two mailboxes that you</p> <p>24 referred to earlier in your testimony that you</p> <p>25 observed on May 10th?</p>

17 (Pages 62 to 65)

<p style="text-align: right;">66</p> <p>1 Bidell</p> <p>2 A. Yes, they are.</p> <p>3 Q. Just by looking at those mailboxes</p> <p>4 does that refresh your recollection as to whether</p> <p>5 there were any names on the mailboxes?</p> <p>6 A. No, I can't identify any names on here</p> <p>7 now and I don't recall seeing any.</p> <p>8 Q. I would like to show you what has</p> <p>9 previously been marked as Plaintiff's Exhibit 6</p> <p>10 and it was so marked on March 8, 2012.</p> <p>11 I ask you if you recognize what's</p> <p>12 depicted in that photograph.</p> <p>13 A. No, I do not.</p> <p>14 Q. So there came a point in time where</p> <p>15 you knocked on the door?</p> <p>16 A. Correct.</p> <p>17 Q. Just for clarification, you were in</p> <p>18 the kitchen and Rashondra indicates to you that if</p> <p>19 you're looking for Theresa she would be through</p> <p>20 that door?</p> <p>21 A. Right. Her room is upstairs.</p> <p>22 Q. Now, did she point to a door in the</p> <p>23 kitchen?</p> <p>24 A. No, she opened a kitchen door which</p> <p>25 led to what I guess would be like an enclosed</p>	<p style="text-align: right;">68</p> <p>1 Bidell</p> <p>2 Q. And where was this back door in</p> <p>3 relation to you as you exited the kitchen door?</p> <p>4 A. I think -- well, if you come out of,</p> <p>5 from what I recall, and it's been a while, but you</p> <p>6 come out kitchen door and you have to go left. So</p> <p>7 that door would be on my right.</p> <p>8 Q. I would like to show you what has</p> <p>9 previously been marked as Plaintiff's Exhibit 5</p> <p>10 and it was so marked on March 8, 2012, and ask you</p> <p>11 to take a look at that photograph.</p> <p>12 Is that the back door that you just</p> <p>13 referenced, understanding that there might be some</p> <p>14 damage to it that wasn't there when you saw it?</p> <p>15 MS. PETILLO: If you can tell. If can</p> <p>16 recognize what's in the photo obviously.</p> <p>17 A. I would believe it is. I'm not a</p> <p>18 hundred percent positive only because of -- I know</p> <p>19 the cement in the back had two cement columns on</p> <p>20 the side of the door and it looks like one of them</p> <p>21 is here, so I would say yes.</p> <p>22 Q. Now, the door that you came out of</p> <p>23 from the kitchen, is that door depicted in the</p> <p>24 photograph?</p> <p>25 A. I don't know if that's it or not. I</p>
<p style="text-align: right;">67</p> <p>1 Bidell</p> <p>2 porch area and there were two other doors there</p> <p>3 and I believe it was the further away door from</p> <p>4 the kitchen door.</p> <p>5 Q. So as far as the -- you opened the</p> <p>6 door from the kitchen and you go into an enclosed</p> <p>7 porch area, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Now, did you see in this enclosed</p> <p>10 porch area any windows that you could see the</p> <p>11 outside?</p> <p>12 A. I don't recall.</p> <p>13 Q. Was there a back door?</p> <p>14 A. There was another door, yes.</p> <p>15 Q. Could you tell whether it was the door</p> <p>16 leading to the outside?</p> <p>17 A. Yes.</p> <p>18 Q. And did you later determine at any</p> <p>19 point in time that that was the back door?</p> <p>20 A. Yes. Right then I could see there was</p> <p>21 a back door.</p> <p>22 Q. So you exit the kitchen through a</p> <p>23 doorway and you go into what you're describing as</p> <p>24 an enclosed porch area, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">69</p> <p>1 Bidell</p> <p>2 can't tell.</p> <p>3 Q. But when you exited that door --</p> <p>4 MS. PETILLO: When you say you can't</p> <p>5 tell if that's it, are you referring to</p> <p>6 something specific in this photo when you</p> <p>7 say if that's it is or are you just --</p> <p>8 A. Is this the door I came out of or is</p> <p>9 there another door here?</p> <p>10 Q. In that photograph there is a door</p> <p>11 that's obviously damaged, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it has windows on it.</p> <p>14 A. Correct.</p> <p>15 Q. And there's another door behind it</p> <p>16 where you can see a locking mechanism and a</p> <p>17 doorknob and that's off to the far right of the</p> <p>18 photograph somewhere toward the middle.</p> <p>19 A. Right.</p> <p>20 Q. With what appears to be a door handle</p> <p>21 just above both the doorknob and the locking</p> <p>22 mechanism, correct?</p> <p>23 A. I see what you're referring to. I</p> <p>24 don't know what that black is. Is that the handle</p> <p>25 you're referring to, the black thing?</p>

18 (Pages 66 to 69)

<p style="text-align: right;">70</p> <p>1 Bidell</p> <p>2 Q. If you can determine whether it was a</p> <p>3 handle.</p> <p>4 A. I can't determine whether it was a</p> <p>5 handle. I see what you're referring to is a</p> <p>6 black, you know, I just can't tell if it's a</p> <p>7 handle or not.</p> <p>8 Q. When you exited the kitchen door, to</p> <p>9 the best of your recollection the back door was to</p> <p>10 your right; is that correct?</p> <p>11 A. When I came out the kitchen, from the</p> <p>12 kitchen, the back door is to my right, yes.</p> <p>13 Q. And then directing your attention back</p> <p>14 to Plaintiff's Exhibit 6, do you recognize this as</p> <p>15 the enclosed porch area that you were describing</p> <p>16 earlier?</p> <p>17 A. No, I do not.</p> <p>18 Q. Did you have to walk down a hallway</p> <p>19 past the back door to get to another doorway?</p> <p>20 A. Not that I recall, no.</p> <p>21 Q. When you walked into the enclosed</p> <p>22 porch area did you walk up to a door and knock on</p> <p>23 a particular door?</p> <p>24 A. Yes, she, um, Rashondra pointed to the</p> <p>25 door for us to knock on.</p>	<p style="text-align: right;">72</p> <p>1 Bidell</p> <p>2 Q. I would like to show you what has</p> <p>3 previously been marked as Plaintiff's Exhibit 7,</p> <p>4 so marked on March 8, 2012, and ask you if you</p> <p>5 recognize what's depicted in that photograph.</p> <p>6 A. I don't recall the staircase.</p> <p>7 Q. Did there come a point in time where</p> <p>8 you reached the top of the staircase?</p> <p>9 A. Yes.</p> <p>10 Q. I would like to show you what has</p> <p>11 previously been marked as Plaintiff's Exhibit 8</p> <p>12 and ask you if you recognize what's depicted in</p> <p>13 that photograph?</p> <p>14 A. Yes, I do recall this.</p> <p>15 Q. What do you recognize it to be?</p> <p>16 A. This is where we stood exactly while</p> <p>17 we spoke to Theresa Tompkins.</p> <p>18 Q. When you say where we stood, are you</p> <p>19 talking about a specific area that's depicted in</p> <p>20 that photograph?</p> <p>21 A. Yes, right here. I'm pointing to the</p> <p>22 front of the, right by the railing of the</p> <p>23 staircase.</p> <p>24 Q. And on that photograph, that would be</p> <p>25 in the bottom center of the photograph?</p>
<p style="text-align: right;">71</p> <p>1 Bidell</p> <p>2 Q. Now, that was not the door that you</p> <p>3 exited the kitchen through. That was yet another</p> <p>4 door, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you knocked on that door.</p> <p>7 A. Right.</p> <p>8 Q. And what happened after you knocked on</p> <p>9 that door?</p> <p>10 A. That was answered by a female who</p> <p>11 identified herself as Theresa Tompkins.</p> <p>12 Q. Did you have a conversation with</p> <p>13 Ms. Tompkins?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Who said what first?</p> <p>16 A. I identified myself to her and told</p> <p>17 her the same thing that we had told Rashondra, you</p> <p>18 know, that we're here responding to a complaint of</p> <p>19 a crying child.</p> <p>20 Q. What, if anything, did Ms. Tompkins</p> <p>21 say in response to that?</p> <p>22 A. She invited us to go up the stairs</p> <p>23 with her. We walked up the stairs with her.</p> <p>24 Q. Let me stop you there.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">73</p> <p>1 Bidell</p> <p>2 A. Correct.</p> <p>3 Q. And this was all three of you,</p> <p>4 Detective Walsh, Detective Maher and yourself?</p> <p>5 A. Yes.</p> <p>6 Q. Was it only Ms. Tompkins that was</p> <p>7 engaged in this discussion in the hallway of the</p> <p>8 upstairs --</p> <p>9 A. That's correct.</p> <p>10 Q. -- area?</p> <p>11 And what did she say after you</p> <p>12 identified yourselves?</p> <p>13 A. You know, I asked her who resided on</p> <p>14 the second floor with her, and she said that she</p> <p>15 resided there with her daughter and that another</p> <p>16 woman resided there with a child.</p> <p>17 Actually, I don't know if she said her</p> <p>18 daughter. She may have said a child. I don't</p> <p>19 know if she had a daughter or a son. She resided</p> <p>20 there with her child as well as there was another</p> <p>21 woman she didn't know that had a room there with</p> <p>22 her child as well.</p> <p>23 Q. And what was the other woman's name?</p> <p>24 A. I did not know.</p> <p>25 Q. Did she tell you and you don't</p>

<p style="text-align: right;">74</p> <p>1 Bidell</p> <p>2 remember?</p> <p>3 A. No, she didn't know. She didn't know</p> <p>4 the woman's name.</p> <p>5 Q. What else did she say, if anything?</p> <p>6 A. I had asked her about, um, you know,</p> <p>7 the people downstairs, that resided downstairs.</p> <p>8 And she said yes, that they knew them. She knew</p> <p>9 Shon, that Shon, um --</p> <p>10 Q. That would be Mr. Lecator?</p> <p>11 A. Correct. Shon hangs out with her</p> <p>12 frequently upstairs. And she knew Rashondra</p> <p>13 Lecator. I asked her if she knew the other</p> <p>14 woman's name downstairs and she said no. I asked</p> <p>15 her if she knew the name of the other man</p> <p>16 downstairs and she said no. She said there were</p> <p>17 several men downstairs, but she didn't know who</p> <p>18 they were.</p> <p>19 Q. Now, I am just going to backtrack for</p> <p>20 a second. When you knocked on the door that</p> <p>21 eventually led you upstairs did that door have a</p> <p>22 doorknob?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did the door have an exterior key</p> <p>25 lock?</p>	<p style="text-align: right;">76</p> <p>1 Bidell</p> <p>2 from downstairs to hang out with her. Anything</p> <p>3 else?</p> <p>4 A. No. Not really. I was trying to see</p> <p>5 if I saw an entrance of a staircase or anything</p> <p>6 here, but I couldn't determine if there was one or</p> <p>7 was not one.</p> <p>8 Q. I'm sorry, could you clarify?</p> <p>9 A. I was trying -- from my vantage point</p> <p>10 here I was trying to see if there was another</p> <p>11 staircase, but I couldn't tell with the other</p> <p>12 doors, that the other doors appeared to be all</p> <p>13 closed. So I couldn't tell what the layout of the</p> <p>14 house was upstairs.</p> <p>15 Q. From where you were standing you could</p> <p>16 see there was a bathroom though, correct? Up</p> <p>17 there?</p> <p>18 A. No, I couldn't tell. Like I said, the</p> <p>19 doors were all closed up there.</p> <p>20 Q. What about the kitchen?</p> <p>21 A. I couldn't tell what was in any of the</p> <p>22 rooms or doors.</p> <p>23 Q. And you're saying because the doors</p> <p>24 were closed?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">75</p> <p>1 Bidell</p> <p>2 A. I don't recall.</p> <p>3 Q. Were you looking for that?</p> <p>4 A. I was looking -- I wasn't really</p> <p>5 looking for the exterior key lock or anything. I</p> <p>6 was trying to see if there was a staircase inside</p> <p>7 the house, and that's what I was concerned, trying</p> <p>8 to see if I could determine.</p> <p>9 Q. Did you not testify earlier that you</p> <p>10 were there to determine whether it was a</p> <p>11 two-family house?</p> <p>12 A. Yes.</p> <p>13 Q. So why wouldn't you look to see</p> <p>14 whether there was indicia of segregated space?</p> <p>15 A. Well, that's what I was trying to</p> <p>16 determine.</p> <p>17 Q. So wouldn't an exterior key lock be</p> <p>18 such indicia?</p> <p>19 A. Yes, it would be.</p> <p>20 Q. But you didn't look for it?</p> <p>21 A. I didn't think of it, no.</p> <p>22 Q. So there came a point in time when you</p> <p>23 got upstairs and you had this conversation with</p> <p>24 the woman, Theresa Tompkins. She indicated to you</p> <p>25 who lived there and that Mr. Lecator came up there</p>	<p style="text-align: right;">77</p> <p>1 Bidell</p> <p>2 Q. On all these rooms.</p> <p>3 A. Right. And if, you know, looking at</p> <p>4 the photos, if there was a door or not a door,</p> <p>5 just from like standing right here was my</p> <p>6 viewpoint, and, you know, you couldn't determine</p> <p>7 even if there wasn't a door, which I don't know if</p> <p>8 this has a door or not, but you can't see inside</p> <p>9 the room, what's inside the room.</p> <p>10 Q. And you're indicating the first</p> <p>11 doorway to the left as depicted in Plaintiff's</p> <p>12 Exhibit 8, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Let me make sure we're clear on this.</p> <p>15 Were the doors opened or closed?</p> <p>16 A. From what I could, what I recall,</p> <p>17 doors were closed. Or what I was -- what I recall</p> <p>18 is that you couldn't make a determination what was</p> <p>19 in the rooms, whether something was a bedroom,</p> <p>20 something was a kitchen, something was a bathroom.</p> <p>21 From where I was, I couldn't determine.</p> <p>22 Q. When did you go there?</p> <p>23 A. On the 11th, May 11th.</p> <p>24 Q. At what time?</p> <p>25 A. I don't recall the exact time.</p>

20 (Pages 74 to 77)

<p style="text-align: right;">78</p> <p>1 Bidell</p> <p>2 Q. It wasn't nighttime though, right?</p> <p>3 A. No, it was daytime. Absolutely</p> <p>4 daytime.</p> <p>5 Q. While you guys were having these</p> <p>6 conversations, all three of you investigators and</p> <p>7 Ms. Tompkins were in this hallway that's depicted</p> <p>8 in Plaintiff's Exhibit 8, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Were you trying to determine what was</p> <p>11 in these rooms?</p> <p>12 A. I was trying to determine, trying to</p> <p>13 spot or observe a staircase from another room.</p> <p>14 Q. Leaving aside a staircase, did you</p> <p>15 look around for other indicia that this was a</p> <p>16 segregated apartment?</p> <p>17 A. No, I did not.</p> <p>18 Q. Why not?</p> <p>19 A. Because I didn't want -- already what</p> <p>20 I was doing was really I think was, um,</p> <p>21 jeopardizing our search warrant and didn't want to</p> <p>22 raise up people that much. So I just went with</p> <p>23 the story that I said, we're just here, we just</p> <p>24 wanted to see if we hear any children crying, if</p> <p>25 everybody was OK. So I didn't want to push the</p>	<p style="text-align: right;">80</p> <p>1 Bidell</p> <p>2 A. Correct.</p> <p>3 Q. How long were you up there?</p> <p>4 A. Just a very few minutes. I guess</p> <p>5 anywhere from three to five minutes.</p> <p>6 Q. Did you see any other individuals</p> <p>7 other than Ms. Tompkins while you were up there?</p> <p>8 A. I did not.</p> <p>9 Q. Did you hear any other individuals in</p> <p>10 the residence while you were on the second floor?</p> <p>11 MS. PETILLO: When you say the</p> <p>12 residence, you're referring to the second</p> <p>13 floor of the residence?</p> <p>14 MR. HORN: Yes.</p> <p>15 A. I did not.</p> <p>16 Q. Did you move your position at all</p> <p>17 after reaching the hallway that's depicted in</p> <p>18 Plaintiff's Exhibit 8?</p> <p>19 A. No, I did not.</p> <p>20 Q. Who was doing the speaking with</p> <p>21 Ms. Tompkins?</p> <p>22 A. I was.</p> <p>23 Q. What were Mr. Walsh and Maher doing</p> <p>24 while you were speaking with Ms. Tompkins?</p> <p>25 A. They were standing behind me.</p>
<p style="text-align: right;">79</p> <p>1 Bidell</p> <p>2 envelope so to speak.</p> <p>3 Q. But you were there to determine</p> <p>4 whether there was segregated space, were you not?</p> <p>5 A. Correct.</p> <p>6 Q. Wouldn't you look for something like</p> <p>7 another kitchen up there?</p> <p>8 A. Again, like I said, I tried to just</p> <p>9 see both downstairs and upstairs, what I could</p> <p>10 observe without making it look like I'm searching</p> <p>11 for something.</p> <p>12 Q. I want to make sure your testimony's</p> <p>13 clear. You said that you were looking around but</p> <p>14 for a staircase.</p> <p>15 A. Correct.</p> <p>16 Q. My question to you is, did you ever</p> <p>17 make an attempt to look in any of these rooms to</p> <p>18 see whether you could see a kitchen?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you ever look into of these rooms</p> <p>21 to see if there was a bathroom up here?</p> <p>22 A. I didn't look into any of the rooms,</p> <p>23 period.</p> <p>24 Q. And that was because you didn't want</p> <p>25 to jeopardize the warrant?</p>	<p style="text-align: right;">81</p> <p>1 Bidell</p> <p>2 Q. Did there come a time where</p> <p>3 Detectives Walsh, Maher, yourself exited the</p> <p>4 hallway that's depicted in Plaintiff's Exhibit 8?</p> <p>5 A. Yes.</p> <p>6 Q. And did you return back down the</p> <p>7 stairs that you had come up?</p> <p>8 A. Yes.</p> <p>9 Q. And did Ms. Tompkins escort you down</p> <p>10 those stairs?</p> <p>11 A. I don't recall if she came with us or</p> <p>12 not.</p> <p>13 Q. Did you guys close the door to the</p> <p>14 second floor?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if Ms. Tompkins closed the</p> <p>17 door?</p> <p>18 A. I don't recall.</p> <p>19 Q. What, if anything, happened after</p> <p>20 that?</p> <p>21 A. We just went back the same way we came</p> <p>22 and exited the location.</p> <p>23 Q. And just so we're clear, you're saying</p> <p>24 you went back into the kitchen?</p> <p>25 A. Correct.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">82</p> <p>1 Bidell</p> <p>2 Q. Now, when you were speaking with</p> <p>3 Ms. Tompkins was Rashondra with you?</p> <p>4 A. No.</p> <p>5 Q. You went down the stairs, you came to</p> <p>6 a door that was originally opened by Ms. Tompkins,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. You opened that door and you go into</p> <p>10 what you described as the enclosed porch area?</p> <p>11 A. Right.</p> <p>12 Q. And then there came a point in time</p> <p>13 where you go back to the door that you came</p> <p>14 through from the kitchen, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, the back door would now be on</p> <p>17 your left to the best of your recollection,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Was that door open or closed at the</p> <p>21 time?</p> <p>22 A. Closed.</p> <p>23 Q. And you were able to see through the</p> <p>24 backyard through the windows in that door?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">84</p> <p>1 Bidell</p> <p>2 Q. And where was she?</p> <p>3 A. In the kitchen.</p> <p>4 Q. And did you say anything to her as you</p> <p>5 passed through the kitchen?</p> <p>6 A. No, we just said thank you very much.</p> <p>7 We appreciate her cooperation.</p> <p>8 Q. And then you walked back to the front</p> <p>9 door; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. The door that one of you, either</p> <p>12 yourself, Walsh or Maher, opened leading into the</p> <p>13 kitchen from the enclosed porch area, was that</p> <p>14 door locked?</p> <p>15 A. No.</p> <p>16 Q. Did it have a locking mechanism?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Can you describe the door?</p> <p>19 A. No. I just recall it was a door and I</p> <p>20 remember it being stuck like an old house or</p> <p>21 something with a lot of paint that took a tug to</p> <p>22 open kind of thing.</p> <p>23 Q. And there came a point in time when</p> <p>24 you exited the house, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">83</p> <p>1 Bidell</p> <p>2 Q. The door to the kitchen, did it have a</p> <p>3 handle?</p> <p>4 A. I don't recall. Well, it had a handle</p> <p>5 from the inside. I don't know if it had one on</p> <p>6 the outside. I don't recall. I can remember her</p> <p>7 pulling on the handle. What's her name?</p> <p>8 Rashondra, I can remember her pulling on the</p> <p>9 handle.</p> <p>10 Q. And you're talking about when she</p> <p>11 initially --</p> <p>12 A. Inside the kitchen, when we were</p> <p>13 inside, correct.</p> <p>14 Q. When she initially opened it for you?</p> <p>15 A. Correct.</p> <p>16 Q. When you got back down to that door to</p> <p>17 the kitchen, who opened it out of yourself, Walsh</p> <p>18 or Maher?</p> <p>19 A. I don't recall who opened the door.</p> <p>20 Q. And then the three of you entered the</p> <p>21 kitchen; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. And at any point in time after</p> <p>24 entering the kitchen did you see Rashondra?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">85</p> <p>1 Bidell</p> <p>2 Q. And what did you do after exiting the</p> <p>3 house?</p> <p>4 A. We went back to the office.</p> <p>5 MS. PETILLO: Is it OK to take a</p> <p>6 five-minute break at this point?</p> <p>7 MR. HORN: Sure. Why don't we take a</p> <p>8 half hour.</p> <p>9 (A luncheon recess was taken at</p> <p>10 12:37 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 Bidell
2 AFTERNOON SESSION
3 (Time noted: 1:32 p.m.)
4 THOMAS BIDE LL , resumed and
5 testified further as follows:
6 EXAMINATION BY (Cont'd.)
7 MR. HORN:
8 Q. So there came a point in time after
9 going up and speaking with Ms. Tomkins that you
10 exited 31 Lafayette Avenue, correct?
11 A. Correct.
12 Q. Did you speak with anyone else other
13 than briefly saying goodbye to Rashondra from the
14 time you exited the second floor till you exited
15 the actual premises?
16 A. No.
17 Q. Where did you go after leaving the
18 premises?
19 A. Just back to our office, 272 Old
20 Country Road.
21 Q. Did you do anything in furtherance of
22 the investigation when you got back to your
23 office?
24 A. I don't believe so. Computer checks,
25 you know, did some computer checks trying to

1 Bidell
2 identify who was there.
3 Q. What do you mean by that?
4 A. The residents of the house, you know,
5 trying to see if there's any other determination
6 that I could make, you know.
7 Q. If I'm understanding you correctly,
8 you utilized a computer to run certain research to
9 determine whether there was any other people
10 residing at the residence?
11 A. Correct, try and further identify,
12 like they had given me the first name of that male
13 they didn't know his last name, you know.
14 Q. And what was the determination you
15 made after doing those computer checks, if any?
16 A. We identified the, or I identified the
17 male. I don't recall his name, but we were able
18 to do a EJustice complaint, you know, and saw his
19 criminal history. We saw our target's criminal
20 history.
21 Q. What about Ms. Tompkins or any of the
22 females you had met?
23 A. As far as what?
24 Q. Did you find them in any of your
25 computer research or were you even looking?

1 Bidell
2 A. You know, once I had them I wasn't
3 looking for them anymore. So if they may have
4 been there, I don't know.
5 Q. This computer research, did you print
6 it out?
7 A. I don't believe so. I don't believe
8 so.
9 Q. If you did, would it be contained in
10 your arrest folder?
11 A. It would be.
12 Q. What was the purpose of doing the
13 computer research?
14 A. Just to identify anybody that we could
15 that was living in the house.
16 Q. Why?
17 A. Well, again, criminal records, see
18 what kind of past history. Like the one fellow I
19 believe had, um, the one I identified had a
20 previous rape conviction. So we were looking to
21 see if any violence, what other type of people we
22 might be dealing with.
23 Q. Is it fair to say this computer search
24 was done to see what type of people the officers
25 executing the warrant could encounter when they

1 Bidell
2 actually performed that duty?
3 A. That's correct.
4 Q. Was there any other purpose for this
5 search?
6 A. No. Not that I can recall.
7 Q. After doing this computer research
8 what, if anything, was the next thing you did in
9 furtherance of this investigation and/or execution
10 of the warrant?
11 A. I met with the BSO lieutenant to give
12 him the information that I had found.
13 Q. Who was that?
14 A. I don't recall his name.
15 Q. What did he look like?
16 A. He was a male white, stocky build, I
17 guess in his forties, maybe fifties.
18 Q. Where did you meet him?
19 A. Excuse me?
20 Q. Where did you meet him?
21 A. At the BSO office, Newbridge Road in
22 Bellmore.
23 Q. When did you meet him?
24 A. Sometime between, I don't know. It
25 was actually on the 12th.

Bidell

Q. Do you remember what time?

A. Afternoon. I don't know exact time, but afternoon, it was in the afternoon.

Q. What did you tell him?

A. I told him what we found, you know, I told him that I saw two mailboxes. We tried to do an investigation to determine if there was a one-family house or a two-family house. We couldn't determine. We couldn't make a determination. I told him that drug sales did take place on the first floor.

I told him that there are children in the house. I told him that there was a toddler bed, which I thought was very important, was a toddler bed six feet from the front door that I knew they would usually throw a flash bang in and that's liable to land right on some kid's chest. So do not do that.

I told him that we went into the house. There's only that we saw a rear staircase. We don't know if there's another staircase or not. We couldn't determine.

I told him that it's affiliated with 20 Miriam, which is a known gang hangout house and

Bidell

that BSO members were conducting regarding this house, and I told this information to the entire group of them, I guess anywhere from 10 to 15 members.

I also gave him copies of the rap sheets, the criminal arrest reports and the names of the people that we were able to identify.

Q. Did you go to the buildings department to pull any of the layouts or blueprints of the premises?

A. No, I did not.

Q. Did you ever attempt to check with the any government entity regarding taxation to see what the house was zoned as?

A. No, I did not.

Q. Did anyone else in the Bureau of Investigations do any checks to see how the house was zoned to your knowledge?

A. I don't believe so.

Q. Within the Bureau of Investigations do individual investigators have cases that they are heading up or supervising or they are the lead detective or investigator on a particular case?

A. Is that how it works?

Bidell

that we believed they are both connected and we don't know what would be found as far as weapons or gang members. Others males are said to be in the house, unidentified both upstairs and down.

Q. Now, you said that it's gang related. What gang?

A. I don't recall whether it was -- it was either Bloods or Crips. I don't recall which.

Q. Would that be reflected in your arrest folder?

A. It should be.

Q. And you indicated there was a connection between 20 Miriam and 31 Lafayette.

Other than the fact that Sha eventually introduced your informant to Mr. Lecator, what other connection was there between the two?

A. Well, that was the connection. And their immediate vicinity to one another as well.

Q. Now, you indicated to this lieutenant in BSO that you were unable to determine whether it was a two-family house, correct?

A. Correct. And he brought me to, when I met him, he brought me into an actual briefing

Bidell

Q. Yes.

A. Yes.

Q. You were the lead investigator on this investigation at 31 Lafayette?

A. That's correct.

Q. Did you tell anyone other than Maher or Walsh that you were going to go to the house specifically to attempt to confirm whether it was a one-family or a two-family on May 11th?

A. No, I did not.

Q. Did you tell anyone other than this BSO lieutenant that you were unable to determine whether it was a one-family or a two-family?

A. Not that I can recall. Other members of the investigations, coworkers of mine, I told them.

Q. Now, you testified you were unable to determine whether it was a one-family or a two-family.

Why did you say that to the BSO lieutenant?

A. Because of the two mailboxes.

Q. The two mailboxes were indicia that it was a two-family, correct?

<p style="text-align: right;">94</p> <p>1 Bidell</p> <p>2 A. The two mailboxes would lead you to</p> <p>3 believe it could be a two-family, but it's not a</p> <p>4 definite sign that it is a two-family.</p> <p>5 Q. But it would be -- I'm not saying that</p> <p>6 it makes it a two-family. But two mailboxes would</p> <p>7 be indicia of two families, correct?</p> <p>8 A. What does indicia mean? I'm sorry.</p> <p>9 Q. Indicia would be some sort of evidence</p> <p>10 that it was two-family.</p> <p>11 A. It would be a clue that it's a</p> <p>12 two-family. However, it doesn't at all</p> <p>13 necessarily mean it's a two-family.</p> <p>14 Q. It's not conclusive, correct?</p> <p>15 A. Correct.</p> <p>16 Q. But it's some evidence.</p> <p>17 A. Yes. That's what rose me to take the</p> <p>18 actions that I did.</p> <p>19 Q. So you saw the two mailboxes and you</p> <p>20 found that to be some evidence of two-family. So</p> <p>21 then you took action after making that</p> <p>22 observation, correct?</p> <p>23 A. Correct.</p> <p>24 Q. What action did you take in</p> <p>25 furtherance of discovering whether this was a</p>	<p style="text-align: right;">96</p> <p>1 Bidell</p> <p>2 A. Correct. It wasn't helpful.</p> <p>3 Q. That's not going to let you know who</p> <p>4 actually resided there at that time, correct?</p> <p>5 A. Correct. And that's also though how</p> <p>6 we used and identified the other fellow that they</p> <p>7 only knew the first name of.</p> <p>8 Q. Accurint is much better when you have</p> <p>9 a partial name. You run the search and then you</p> <p>10 look through the list to see if anyone matches</p> <p>11 that name, correct?</p> <p>12 A. That's one of the uses, yes.</p> <p>13 Q. After seeing those mailboxes and as</p> <p>14 you described it taking action, what evidence did</p> <p>15 you receive that said to you that this was a</p> <p>16 one-family house?</p> <p>17 A. The evidence, the main thing basing my</p> <p>18 decision on was looking at and interviewing and</p> <p>19 going to see for myself what I could, get in the</p> <p>20 doors and try and determine if it was a one- or</p> <p>21 two-family house, and from what I could see it</p> <p>22 appeared to be a one-family house that people came</p> <p>23 and went as they pleased.</p> <p>24 And I guess it seemed like the people</p> <p>25 didn't all know each other. It seems almost as if</p>
<p style="text-align: right;">95</p> <p>1 Bidell</p> <p>2 two-family? And I'm speaking of 31 Lafayette</p> <p>3 Avenue.</p> <p>4 A. Just the actions that I repeated, that</p> <p>5 I stated to you earlier. I sent the CI back to</p> <p>6 the location to see if he could determine. We</p> <p>7 went there with a ruse to try and see if we could</p> <p>8 determine.</p> <p>9 We did the computer checks, what we</p> <p>10 could, to see if there was anything that would</p> <p>11 stand out that would say it was a two-family.</p> <p>12 Q. Let me stop you there. What computer</p> <p>13 checks did you do to determine whether it was a</p> <p>14 two-family?</p> <p>15 A. On the address at 31 Lafayette.</p> <p>16 Q. What searches did you run to determine</p> <p>17 whether it was a two-family?</p> <p>18 A. Accurint.</p> <p>19 Q. Could you describe that search?</p> <p>20 A. It would tell you the names of the</p> <p>21 people and there were a ton of names of people</p> <p>22 listed at the -- it didn't help us. It didn't</p> <p>23 assist us.</p> <p>24 Q. Accurint, that will show you, anyone</p> <p>25 who has ever used that, as their address, correct?</p>	<p style="text-align: right;">97</p> <p>1 Bidell</p> <p>2 rooms were possibly rented out by the week. They</p> <p>3 didn't seem like they knew each other very well</p> <p>4 and it seemed like it was a one-family house. My</p> <p>5 impression was it was a one-family house, that</p> <p>6 different rooms were rented out to people was the</p> <p>7 impression I took away.</p> <p>8 Q. Now, you've entered houses under ruses</p> <p>9 before to seek some sort of evidence, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And this neighborhood that</p> <p>12 31 Lafayette is in, is a high crime area; is it</p> <p>13 not?</p> <p>14 A. That's correct.</p> <p>15 Q. In high crime areas people tend not to</p> <p>16 be extremely forthcoming with their names,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And they tend to give false names or</p> <p>20 aliases, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And they also tend not to talk too</p> <p>23 much about what's going on in the neighborhood as</p> <p>24 just for sheer self-preservation, correct?</p> <p>25 A. Sometimes, yes.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">98</p> <p>1 Bidell</p> <p>2 Q. As far as them not knowing each other,</p> <p>3 it could simply be a case of they didn't want to</p> <p>4 give you the full name of any of these</p> <p>5 individuals, correct?</p> <p>6 A. It could be, correct.</p> <p>7 Q. And you have encountered that before,</p> <p>8 have you not?</p> <p>9 A. You can't prove it, but you can get</p> <p>10 that feeling that's what's going on.</p> <p>11 Q. What I want to make clear is, did you</p> <p>12 ever make a determination -- because you just</p> <p>13 testified that it appeared to be a one-family</p> <p>14 house.</p> <p>15 A. Correct.</p> <p>16 Q. Did you ever make that determination</p> <p>17 or is it your testimony that you were unable to</p> <p>18 make a determination of whether it was one or</p> <p>19 two-family or something else?</p> <p>20 A. My determination, it was a one-family</p> <p>21 house that had almost like rooms for rent. That</p> <p>22 was my determination. And it didn't appear</p> <p>23 structured. People didn't know each other inside</p> <p>24 the house. You know, it didn't seem like, it</p> <p>25 didn't seem like there was a family residing on</p>	<p style="text-align: right;">100</p> <p>1 Bidell</p> <p>2 these kinds of areas where you have indicated you</p> <p>3 have gone in under ruses and everything else, my</p> <p>4 question is, in one segregated space isn't it</p> <p>5 common for multiple families to live in one</p> <p>6 segregated space?</p> <p>7 A. Um, yes. I guess yes.</p> <p>8 Q. Isn't it also common in these types of</p> <p>9 areas where there's high crime to have individuals</p> <p>10 who were unrelated residing with each other, and</p> <p>11 giving you an, example, a mother, a daughter and a</p> <p>12 man who's unrelated to either one of those</p> <p>13 females?</p> <p>14 A. Yes.</p> <p>15 Q. Isn't common for multiple single</p> <p>16 mothers to reside in the same segregated space for</p> <p>17 financial reasons?</p> <p>18 A. I don't know about multiple -- I don't</p> <p>19 have experience with multiple single mothers. I</p> <p>20 don't know about that.</p> <p>21 Q. How about multiple children with</p> <p>22 different mothers living in the same premises?</p> <p>23 A. I wouldn't -- I don't know it to be</p> <p>24 that extent. I just know multiple people, that it</p> <p>25 doesn't appear that they are related to be living</p>
<p style="text-align: right;">99</p> <p>1 Bidell</p> <p>2 this floor and another family residing on that</p> <p>3 floor. It didn't seem like clear-cut</p> <p>4 determination that way. I wasn't able to</p> <p>5 determine that.</p> <p>6 Q. In areas such as this in high crime</p> <p>7 areas that you've entered, isn't it a fact that</p> <p>8 even when you have one family it's not the nuclear</p> <p>9 family -- withdrawn. Isn't it a fact that in</p> <p>10 these type of neighborhoods where it's high crime</p> <p>11 areas it's common for multiple families to be</p> <p>12 residing in the same residence?</p> <p>13 A. It's common for multiple families to</p> <p>14 be residing in a residence, yes.</p> <p>15 Q. Even within a segregated space it's</p> <p>16 common in these high crime areas for multiple</p> <p>17 families to be living in one segregated space.</p> <p>18 A. Is that the same question?</p> <p>19 Q. I just want to make sure we're clear.</p> <p>20 We're saying premises. I want to say in one</p> <p>21 segregated space.</p> <p>22 A. Yeah, like I said, it appeared to be a</p> <p>23 place where rooms were for rent inside the one</p> <p>24 house.</p> <p>25 Q. No, my question to you though is, in</p>	<p style="text-align: right;">101</p> <p>1 Bidell</p> <p>2 in the same household. That's been my experience.</p> <p>3 Q. And that was present at 31 Lafayette,</p> <p>4 correct?</p> <p>5 A. That's what it appeared to me, yes.</p> <p>6 Q. You know the purpose for going into</p> <p>7 31 Lafayette on May 11th was to determine whether</p> <p>8 it was a two-family house, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Now, you weren't going in there to</p> <p>11 determine whether there were two families living</p> <p>12 there. Your purpose was to go see whether there</p> <p>13 was two segregated spaces within that dwelling,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. When you got there, my question to you</p> <p>17 is, what evidence did you find regarding</p> <p>18 segregated space?</p> <p>19 A. Just the feeling that I got that from</p> <p>20 talking to the people, talking to Rashondra and</p> <p>21 talking to Theresa that it seemed like it was one</p> <p>22 household with different people residing there.</p> <p>23 Q. Did you make any physical observation</p> <p>24 that you can articulate as you sit here today that</p> <p>25 led you to believe that this was a one-family</p>

26 (Pages 98 to 101)

<p style="text-align: right;">102</p> <p>1 Bidell</p> <p>2 house?</p> <p>3 A. Well, I observed one kitchen.</p> <p>4 Q. Let me stop you there. I want to make</p> <p>5 sure my question is clear. From your short</p> <p>6 response it seems it wasn't.</p> <p>7 A. OK.</p> <p>8 Q. What positive observation did you make</p> <p>9 that led you to believe that this was a one-family</p> <p>10 house? Not what you didn't see, what you did see.</p> <p>11 A. Well, I saw one kitchen, which would</p> <p>12 make me believe that it was a one-family house.</p> <p>13 Q. OK.</p> <p>14 A. I saw a common staircase. You know, I</p> <p>15 was looking to see if there was another staircase</p> <p>16 or not. It seemed like there was interaction</p> <p>17 between the floors, yes, you know, they're up on</p> <p>18 my floor and, yes, I'm down on that floor where</p> <p>19 their rooms are. I guess that's about it. I</p> <p>20 can't think. You know, if something else comes to</p> <p>21 mind I'll mention it.</p> <p>22 Q. Is there anything that you didn't see</p> <p>23 that led you to believe that this was a one-family</p> <p>24 house?</p> <p>25 A. Is there anything I didn't see?</p>	<p style="text-align: right;">104</p> <p>1 Bidell</p> <p>2 Q. Was that part of your thought process</p> <p>3 where you said, You know what? I didn't even see</p> <p>4 a bathroom up there. They've got to be all using</p> <p>5 the bathroom on the first floor?</p> <p>6 A. No.</p> <p>7 Q. What about locks? Isn't that</p> <p>8 something you would want to look for if you were</p> <p>9 trying to figure out whether space was segregated?</p> <p>10 A. Well, that was something I was trying</p> <p>11 to look for.</p> <p>12 Q. But you testified earlier you didn't</p> <p>13 even look to see whether there were locks on the</p> <p>14 door that led up to the second floor, correct?</p> <p>15 A. Yes, I didn't have time to study.</p> <p>16 There were things that I want to do and what</p> <p>17 actually happened are two different things. You</p> <p>18 know, in there talking, you're trying to conduct</p> <p>19 an interview at the same time you're trying to</p> <p>20 look around and observe what you can. So it was</p> <p>21 something that I never got to really observe.</p> <p>22 You're trying to do as many things at</p> <p>23 once. At the same time you're hoping that</p> <p>24 obviously that the defendant is not in there or</p> <p>25 that you're going to have a confrontation with</p>
<p style="text-align: right;">103</p> <p>1 Bidell</p> <p>2 Q. Something you were looking for you</p> <p>3 didn't see it and you came to use that as evidence</p> <p>4 to say this is a one-family house.</p> <p>5 A. If I had seen a second kitchen I would</p> <p>6 have thought it may better be a two-family house.</p> <p>7 And again, that wouldn't necessarily mean it was a</p> <p>8 two-family house, but it would just be another</p> <p>9 point in that direction that it was a two-family</p> <p>10 house. Because I have been in plenty of houses</p> <p>11 that had three kitchens and it was still a</p> <p>12 one-family house. You know, they had one in the</p> <p>13 basement, you know, one for other relatives living</p> <p>14 in the house. But, um, no.</p> <p>15 Q. Another bathroom would be some sort of</p> <p>16 clue that there was --</p> <p>17 A. No, because you could have four</p> <p>18 bathrooms in a one-family house.</p> <p>19 Q. My question is, keep in mind this</p> <p>20 question started out with is there something you</p> <p>21 didn't see that led you to believe it was a</p> <p>22 one-family house.</p> <p>23 Did you see a bathroom on the second</p> <p>24 floor?</p> <p>25 A. No.</p>	<p style="text-align: right;">105</p> <p>1 Bidell</p> <p>2 people. So there's a lot of things going through</p> <p>3 your head distracting you all at once where you're</p> <p>4 trying to attain those goals.</p> <p>5 Q. Did you ever have the premises under</p> <p>6 24-hour video observation at any point in time in</p> <p>7 the 30 days before the eventual execution of the</p> <p>8 warrant?</p> <p>9 A. No, I did not.</p> <p>10 Q. Did you ever have any stationary video</p> <p>11 surveillance on the outside of the premises prior</p> <p>12 to the raid?</p> <p>13 A. No, I did not.</p> <p>14 Q. Are you aware of whether there was any</p> <p>15 stationary video surveillance on the premises</p> <p>16 within the 30 days prior to the raid?</p> <p>17 A. I'm not aware of it, no.</p> <p>18 Q. When I say stationary video</p> <p>19 surveillance, do you know what I'm talking about?</p> <p>20 A. You're talking about a pole camera or</p> <p>21 something?</p> <p>22 Q. A pole camera, a plant camera. It</p> <p>23 could be anything from a --</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. -- fake bush to a twig that they put</p>

27 (Pages 102 to 105)

1 Bidell
2 at the premises just to see the comings and goings
3 of individuals.
4 A. No, I am not aware of that.
5 Q. You indicated that you had
6 surveillance on the premises prior to the
7 execution of the raid and that that surveillance
8 was not static but highly dynamic because of the
9 spotters in the area, correct?
10 A. Correct.
11 Q. During any of this surveillance you
12 had at 31 Lafayette did you ever see individuals
13 entering and leaving the premises through the back
14 door?
15 A. No, I did not. That was another thing
16 that we were looking for, to see if there was
17 another entrance. We didn't see another entrance
18 from what we could see, but everybody we saw came
19 and entered the front door.
20 Q. Are you familiar with an individual
21 called Iyanna Davis?
22 A. No, I'm not.
23 Q. Are you familiar with an individual
24 named Natasha Little?
25 A. Natasha Little I believe is the name

1 Bidell
2 given by the woman that was shot.
3 Q. Are you aware now as you sit here
4 today that her name, the woman who was shot, is
5 Iyanna Davis?
6 A. That sounds familiar.
7 Q. Just so it's clear, I actually
8 represent Iyanna Davis and this lawsuit is in
9 regards to a shooting that she alleges took place
10 at 31 Lafayette.
11 A. Right.
12 Q. Going back to your conversation with
13 the lieutenant from the BSO, what did you tell him
14 was your reason to believe that this was a
15 one-family?
16 A. I didn't elaborate to him.
17 Q. But you did tell him that you believed
18 it was a one-family.
19 A. I told him that there were two
20 mailboxes, but we couldn't make a determination,
21 anything to show us that it was a two-family
22 house.
23 Q. Why did you tell him that?
24 A. Because there were two mailboxes.
25 Q. No, no, no. When I asked you just

1 Bidell
2 earlier you said you made the determination that
3 it was a one-family, correct?
4 A. I made the -- I believed it was a
5 one-family. That's my determination, correct.
6 Q. So my question to you is, you just
7 testified that you told the lieutenant in BSO that
8 you couldn't make a determination, did you not?
9 A. I couldn't make a determination that
10 it was a two-family house. I didn't see that it
11 was a two-family. Because two mailboxes would
12 lend you to believe that it was a two-family.
13 However, I wasn't able to make that determination.
14 Q. I'm going to have to ask this question
15 again because I'm not clear on your response.
16 A. Uh-huh.
17 Q. Did you tell the lieutenant in BSO
18 that you made a determination that it was your
19 belief that that was a one-family house?
20 A. Yes.
21 Q. Did you tell the lieutenant from BSO
22 that you could not make a determination as to
23 whether it was a one-family or a two-family?
24 A. No. If I said that, I misspoke.
25 Q. When you had this conversation with

1 Bidell
2 the lieutenant from BSO and you told him that you
3 had made a determination that this was a
4 one-family, did you give him any support for your
5 opinion?
6 A. No.
7 Q. Did you ever tell him why you thought
8 it might have been a two-family house?
9 A. Only the two mailboxes.
10 Q. Did you indicate to the lieutenant
11 from BSO that the stairs could not be accessed
12 from the first floor without going through two
13 sets of doors?
14 A. No. I told him that we entered the
15 second floor through a rear stairwell, but we
16 couldn't determine if there was another staircase
17 or not.
18 Q. Did you tell him that that stairwell
19 was not accessible unless you went through two
20 doors from the first floor?
21 A. I told him that there was a -- I
22 guess, yeah, you had to go out the kitchen door
23 and then to that other door, correct.
24 Q. What else did you tell the BSO
25 lieutenant?

<p style="text-align: right;">110</p> <p>1 Bidell</p> <p>2 A. Like I said about that bed basically,</p> <p>3 um, I wouldn't use the flash bang grenade because</p> <p>4 a child may be sleeping by the front door. I told</p> <p>5 him that, like I stated earlier, that we believed</p> <p>6 it to be associated with 20 Miriam and they</p> <p>7 already were aware they were doing two entries.</p> <p>8 It was going to be a simultaneous search warrant</p> <p>9 on 20 Miriam and 31 Lafayette and that, you know,</p> <p>10 we didn't know what to expect as far as gang</p> <p>11 activity inside 31 Lafayette or persons that would</p> <p>12 be in there. I gave him the names of people that</p> <p>13 we did identify and criminal records that we could</p> <p>14 identify of the people in 31 Lafayette.</p> <p>15 Q. And you indicated there was a briefing</p> <p>16 with 12 to 15 people?</p> <p>17 A. That's the same conversation I'm</p> <p>18 talking about.</p> <p>19 Q. Oh, OK.</p> <p>20 A. When I first met the lieutenant he</p> <p>21 just brought me right into the briefing.</p> <p>22 Q. Now, the individuals at the briefing,</p> <p>23 were these rank and file BSO?</p> <p>24 A. They were rank and file BSO and I</p> <p>25 believe the inspector was present as well.</p>	<p style="text-align: right;">112</p> <p>1 Bidell</p> <p>2 Other than --</p> <p>3 A. No, there was not.</p> <p>4 Q. -- introductions.</p> <p>5 A. There was a meeting just to initiate</p> <p>6 BSO's involvement, and that was back -- I don't</p> <p>7 have an exact date. Let's see. Somewhere between</p> <p>8 the 19th I believe of April and the 5th of May</p> <p>9 there was an initial meeting with myself, I</p> <p>10 believe Investigator Maher, the inspector from</p> <p>11 BSO, the same lieutenant from BSO and members of</p> <p>12 the Hempstead PD in which we discussed the</p> <p>13 initial, um, bringing to them the idea that we</p> <p>14 wanted to have two search warrants at the same</p> <p>15 time.</p> <p>16 Q. Bringing to BSO?</p> <p>17 A. Yes. To do the entries for us.</p> <p>18 Q. During that meeting -- I'm sorry, when</p> <p>19 was that meeting?</p> <p>20 A. When?</p> <p>21 Q. Yes.</p> <p>22 A. I don't have an exact date, but</p> <p>23 sometime after the April 19th and May 5th of 2010.</p> <p>24 MR. HORN: Could we go off the record.</p> <p>25 (Discussion off the record.)</p>
<p style="text-align: right;">111</p> <p>1 Bidell</p> <p>2 Q. And what was the content of the</p> <p>3 briefing?</p> <p>4 A. I wasn't privy to their briefing.</p> <p>5 When I walked in I did see a large screen showing</p> <p>6 a picture of 31 Lafayette, which led me to believe</p> <p>7 that's what they were there for, because he just</p> <p>8 said just come into this room. I wasn't planning</p> <p>9 on attending their briefing or anything. It just</p> <p>10 happened it was going on when I was there and I</p> <p>11 just told them the information I had just given</p> <p>12 you and left. I wasn't asked to stay and I didn't</p> <p>13 ask to stay for the remainder of their briefing.</p> <p>14 Q. Just so we're clear, the information</p> <p>15 that you gave to the lieutenant, when you gave</p> <p>16 that testimony, you were talking about the</p> <p>17 information you gave to all these rank and file of</p> <p>18 the BSO.</p> <p>19 A. That's correct.</p> <p>20 Q. And that would be the testimony you</p> <p>21 just testified regarding the mailboxes, your</p> <p>22 belief that it was a one-family, et cetera.</p> <p>23 A. Correct.</p> <p>24 Q. There was no independent conversation</p> <p>25 with simply the lieutenant from BSO, correct?</p>	<p style="text-align: right;">113</p> <p>1 Bidell</p> <p>2 Q. At this meeting were your</p> <p>3 determinations as to how many people resided at</p> <p>4 the house discussed? And the reason I ask that is</p> <p>5 because you've given the date, time range of</p> <p>6 April 19th to May 5th.</p> <p>7 A. Right.</p> <p>8 Q. Yet your earlier testimony you talked</p> <p>9 about it wasn't till May 10th that you first</p> <p>10 observed evidence that it might be a two-family</p> <p>11 house.</p> <p>12 A. Right.</p> <p>13 Q. So my question to you is, during this</p> <p>14 conversation that you had with Hempstead PD, when</p> <p>15 you first discussed doing a joint search warrant,</p> <p>16 did you have any discussion regarding your belief</p> <p>17 that it might be a two-family house?</p> <p>18 A. No, I had no knowledge of -- at that</p> <p>19 time I hadn't seen the two mailboxes. The CI</p> <p>20 never said anything of it. None of my</p> <p>21 observations led me to believe it was a</p> <p>22 two-family, so no.</p> <p>23 Q. After this meeting with BSO you</p> <p>24 relayed your information that you've just</p> <p>25 testified to and you left the room; is that</p>

29 (Pages 110 to 113)

<p style="text-align: right;">114</p> <p>1 Bidell</p> <p>2 correct?</p> <p>3 A. This first one, yes.</p> <p>4 Q. So --</p> <p>5 A. The first --</p> <p>6 MS. PETILLO: Wait a minute.</p> <p>7 Q. -- fast forward to when you spoke to</p> <p>8 the lieutenant and the 12 to 15 officers, the rank</p> <p>9 and file of the BSO, where you told them your</p> <p>10 observations, after you gave your information to</p> <p>11 them you left the room?</p> <p>12 A. That's correct.</p> <p>13 Q. And this would be approximately</p> <p>14 May 12th?</p> <p>15 A. It was May 12th, yes.</p> <p>16 Q. And that would be sometime in the</p> <p>17 afternoon, correct?</p> <p>18 A. In the afternoon, correct.</p> <p>19 Q. Why did you leave?</p> <p>20 A. I wasn't asked to stay. You know, I</p> <p>21 know they're going to be going over. I gave them</p> <p>22 everything I had. I don't recall them asking me</p> <p>23 any questions.</p> <p>24 At that point I would understand like</p> <p>25 a BSO or emergency service unit they would then be</p>	<p style="text-align: right;">116</p> <p>1 Bidell</p> <p>2 and I think they may have given us a position in</p> <p>3 the caravan of emergency service vehicles where we</p> <p>4 should be. I don't recall exactly. They gave me,</p> <p>5 um, they gave a description of the road or</p> <p>6 whatever way they were going to drive there, but</p> <p>7 we really didn't have to worry because we were</p> <p>8 just following the car in front of us to that</p> <p>9 location.</p> <p>10 Q. Did you in fact convoy with the BSO</p> <p>11 over to the 31 Lafayette --</p> <p>12 A. Yes.</p> <p>13 Q. -- 20 Miriam area?</p> <p>14 A. Yes.</p> <p>15 Q. Did you in fact park down the block</p> <p>16 from 31 Lafayette?</p> <p>17 A. Correct.</p> <p>18 Q. Were you on Lafayette or Miriam?</p> <p>19 A. I was on Lafayette.</p> <p>20 Q. North or south of the location?</p> <p>21 A. I don't know north or south too well.</p> <p>22 If you're standing in front of 31 Lafayette I was</p> <p>23 down the block to the left.</p> <p>24 Q. After you parked there tell me what</p> <p>25 you heard, observed in regards to the execution of</p>
<p style="text-align: right;">115</p> <p>1 Bidell</p> <p>2 talking about their tactics. I'm not going to be</p> <p>3 involved in any of that. There's no need for me</p> <p>4 to remain.</p> <p>5 Q. Did you stay at BSO headquarters or</p> <p>6 you just left?</p> <p>7 A. No, I left.</p> <p>8 Q. Where was your next involvement with</p> <p>9 this investigation and/or execution of this</p> <p>10 warrant?</p> <p>11 A. The morning of the 13th.</p> <p>12 Q. And talk to me. What is your</p> <p>13 involvement, your first involvement on the 13th?</p> <p>14 A. We had a predetermined meeting spot.</p> <p>15 It was over on Franklin Avenue in Garden City I</p> <p>16 believe, and they just gave out at that time, I</p> <p>17 don't remember who, but someone instructed the</p> <p>18 lines of how the search warrant would be</p> <p>19 conducted, the way we would drive over to execute</p> <p>20 the search warrant, that we would not enter the</p> <p>21 premise until we were told to enter the premise</p> <p>22 from a member of BSO. They would secure the house</p> <p>23 before we entered.</p> <p>24 We were instructed to stay down the</p> <p>25 block from the house until we were told to enter</p>	<p style="text-align: right;">117</p> <p>1 Bidell</p> <p>2 the raid, warrant.</p> <p>3 A. We were I guess anywhere from four to</p> <p>4 six or seven houses down the block. You observed,</p> <p>5 I observed the BSO members exit their vehicles.</p> <p>6 It appeared like they were surrounding the house</p> <p>7 and charged up. You could hear them screaming</p> <p>8 "Police, search warrant." You could hear a lot of</p> <p>9 banging, a lot of noise, them constantly yelling</p> <p>10 "Police, search warrant."</p> <p>11 Off in the distance you could hear</p> <p>12 what appeared to be flash grenades going off,</p> <p>13 which to me I was thinking it was possibly at</p> <p>14 20 Miriam that they were using those, that search</p> <p>15 warrant was being executed. That's it.</p> <p>16 Q. Did you hear a gunshot?</p> <p>17 A. There was a time, a little after the</p> <p>18 initial entrance to the house, I mean, they were</p> <p>19 still running around the outside of the house, but</p> <p>20 they had already entered the premise. BSO was</p> <p>21 still running around the house and there was a</p> <p>22 time, I don't know how many minutes from that, but</p> <p>23 there was a noise where I was standing with a</p> <p>24 couple of fellows that I worked with and you heard</p> <p>25 a noise. Again, there was a lot of banging and</p>

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1 Bidell

2 everything, and I didn't determine that it was a

3 gunshot, but somebody said they thought it was a

4 gunshot. Somebody I was with said they thought it

5 sounded like a gun shot.

6 Q. Just so I'm clear, you heard a noise,

7 but you couldn't tell whether it was a gunshot --

8 A. I couldn't.

9 Q. -- or not, correct?

10 A. There was constant banging and noise

11 and yelling, so I couldn't determine.

12 Q. After you heard that noise that you

13 couldn't distinguish, what did you do, if

14 anything?

15 A. Nothing. Stood right there.

16 Q. Did there come a point in time where

17 you eventually went to 31 Lafayette?

18 A. Yes.

19 Q. Who told you that it was clear to go

20 there?

21 A. A member of BSO.

22 Q. Were you informed at all that there

23 had been a gunshot fired prior to going to

24 31 Lafayette?

25 A. Yes.

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1 Bidell

2 Q. Who told you that?

3 A. A member of BSO.

4 Q. What was his name?

5 A. I don't recall. They all had the

6 helmets on. I really didn't know. We had also,

7 um, after that noise we then heard -- I believe

8 there was, um, I think they were with us in the

9 procession, but I'm not a hundred percent sure,

10 but like ambulance personnel going to the

11 location.

12 Q. Did you hear over the radio that

13 someone was shot?

14 A. We didn't have a radio.

15 Q. You saw medical personnel approaching

16 31 Lafayette?

17 A. Correct.

18 Q. At that point in time did you know

19 that someone was shot?

20 A. Not then. Not until after. When one

21 of the BSO guys was somewhere in our vicinity, I

22 said, Was that a gunshot? And he said yes. And I

23 said, Was everybody OK? And he said, I believe he

24 said a woman upstairs was shot.

25 Q. Did you ever see the woman who was

120

1 Bidell

2 shot?

3 A. No.

4 Q. Did there come a point in time where

5 you went into the first floor?

6 A. Yes.

7 Q. Were there any individuals detained at

8 that point in time on the first floor?

9 A. Yes.

10 Q. And was it a male and a female?

11 A. I remember seeing my target. I don't

12 remember seeing the female.

13 Q. But as you sit here today, you know a

14 female was arrested, correct?

15 A. Yes, she wasn't arrested -- she wasn't

16 placed under arrest on entry, the female. The

17 circumstances I recall of the female being

18 arrested, she had asked to use the bathroom and we

19 had a female investigator watching her, and she

20 said, Yes, you can use the bathroom, and on her

21 way to the bathroom she grabbed some kind of box

22 or something, some kind of object, and the

23 investigator approached her. What are you doing

24 with that? And she tried to get into the bathroom

25 and I believe there was a little scuffle involved

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1 Bidell

2 and the box was opened up and there was I believe

3 some kind of drugs and drug paraphernalia in that

4 box, and at that time she was placed under arrest.

5 Q. Were you present for this?

6 A. I was in the house. I didn't witness

7 it.

8 Q. But your target was detained when you

9 first entered the house, correct?

10 A. Correct.

11 Q. And that was Mr. Lecator?

12 A. Correct.

13 Q. What did you do when you entered the

14 house?

15 A. We were told originally we could begin

16 our search of the first floor and basement.

17 However, the second floor was going to be held as

18 a crime scene. So we wouldn't be able to go up

19 there until it was cleared. I don't even recall

20 if she was -- I don't remember if she was taken

21 out, the victim was taken out at that time or not.

22 If she was still up there when we went in or not,

23 I really don't remember. She might have been.

24 She was probably removed before we got in.

25 Q. But there came a point in time where

<p style="text-align: right;">122</p> <p>1 Bidell</p> <p>2 you searched the first floor?</p> <p>3 A. Correct.</p> <p>4 Q. Can you tell me what you did in</p> <p>5 pursuit of the search?</p> <p>6 A. We began searching for any evidence of</p> <p>7 drugs, contraband, weapons.</p> <p>8 Q. How many of you?</p> <p>9 A. I don't recall exactly, but I would</p> <p>10 guess about six of us were in there. Different</p> <p>11 people had different jobs. One fellow was there</p> <p>12 to — Gillespie, William Gillespie was there to</p> <p>13 take photos. I believe photos were taken before</p> <p>14 the search began. He walked around, Gillespie</p> <p>15 took photos before the search began.</p> <p>16 And some people were assigned to guard</p> <p>17 the prisoners such as the one female investigator</p> <p>18 that was guarding the, um, not just prisoners, but</p> <p>19 anybody in the apartment. You want them to just</p> <p>20 sit still until the search is concluded, you know,</p> <p>21 and patted down. They would be patted down,</p> <p>22 searched as well for any weapons or contraband.</p> <p>23 Q. What was that female investigator's</p> <p>24 name?</p> <p>25 A. Lana, and it's a long last name.</p>	<p style="text-align: right;">124</p> <p>1 Bidell</p> <p>2 definitely. I don't know if they were taken</p> <p>3 afterwards.</p> <p>4 Q. How thorough a search did you do? Was</p> <p>5 it a cursory search or did you go into drawers?</p> <p>6 A. We went into drawers. You know,</p> <p>7 narcotics could be very small. They could be in a</p> <p>8 jacket pocket or anything.</p> <p>9 Q. So you checked clothing?</p> <p>10 A. Correct.</p> <p>11 Q. Drawers?</p> <p>12 A. Objects.</p> <p>13 Q. Anything you think that —</p> <p>14 A. Anyplace that we believed you could</p> <p>15 hide narcotics.</p> <p>16 Q. Were dogs ever brought in or a dog?</p> <p>17 A. I'm not sure. I believe a dog was</p> <p>18 brought in. Somebody requested a dog, but I'm not</p> <p>19 positive.</p> <p>20 Q. Would that be reflected in your arrest</p> <p>21 folder?</p> <p>22 A. Not necessarily. Also involved at the</p> <p>23 location with us were state police, New York State</p> <p>24 police. We had one investigator from the state</p> <p>25 police. He was assigned to take the names of</p>
<p style="text-align: right;">123</p> <p>1 Bidell</p> <p>2 Sapuza (phon)? I don't know. Something with a Z.</p> <p>3 It's quite a long name, Russian name.</p> <p>4 Q. Who else?</p> <p>5 A. Myself.</p> <p>6 Q. What duties were you charged with?</p> <p>7 A. Searching.</p> <p>8 Phil Jardina.</p> <p>9 Q. What was Mr. Jardina doing?</p> <p>10 A. I don't recall if he was on the search</p> <p>11 team or not.</p> <p>12 Q. Who else?</p> <p>13 A. I know Bill Walsh and James Carol</p> <p>14 transported the prisoner to 272 Old Country Road.</p> <p>15 They were in charge of transporting any prisoners.</p> <p>16 Thomas Maher, I think he was in there.</p> <p>17 I don't recall what his duties were.</p> <p>18 Q. Did you have anyone videotape the</p> <p>19 downstairs?</p> <p>20 A. No, just the still pictures.</p> <p>21 Q. And you would take still photos before</p> <p>22 the search and then after the search just to</p> <p>23 preserve them for evidence?</p> <p>24 A. I don't know if pictures were taken</p> <p>25 afterwards. I remember them being taken before,</p>	<p style="text-align: right;">125</p> <p>1 Bidell</p> <p>2 those that were entering and leaving the premise,</p> <p>3 and another investigator was assigned to just</p> <p>4 guard the rear of the premise.</p> <p>5 Q. Where was this guy, this state officer</p> <p>6 who was taking the names of people entering and</p> <p>7 leaving?</p> <p>8 A. Where was he?</p> <p>9 Q. Yes.</p> <p>10 A. He was in the front of the house,</p> <p>11 outside the house.</p> <p>12 Q. How long did the search of the first</p> <p>13 floor take?</p> <p>14 A. I don't recall how long the entire</p> <p>15 search took and we wouldn't know the time for a</p> <p>16 single floor. We wouldn't know what the time we</p> <p>17 break up the three levels.</p> <p>18 Q. How long would it be the first and</p> <p>19 second floor search?</p> <p>20 A. Again, I don't recall how long we were</p> <p>21 there.</p> <p>22 Q. Did you do a search of the second</p> <p>23 floor or was that —</p> <p>24 A. Yes. No, we did it and I remember</p> <p>25 there was a delay. We had to wait. After our</p>

<p style="text-align: right;">126</p> <p>1 Bidell</p> <p>2 search of the basement and first floor were</p> <p>3 conducted, we had to wait a while until they</p> <p>4 concluded their investigation on the second floor,</p> <p>5 and by they, I mean I believe Nassau County</p> <p>6 homicide was there. Who else? Members of the</p> <p>7 Nassau County Third Squad, detective squad were</p> <p>8 there. Crime scene -- and Nassau County crime</p> <p>9 scene were there.</p> <p>10 Q. Did you participate personally in the</p> <p>11 search of the second floor?</p> <p>12 A. Yes.</p> <p>13 Q. Tell me what happened when you got to</p> <p>14 the second floor.</p> <p>15 A. We just conducted a search of the</p> <p>16 second floor similar to the search on the first</p> <p>17 floor.</p> <p>18 Q. As thorough?</p> <p>19 A. Yes.</p> <p>20 Q. What rooms did you search?</p> <p>21 A. I don't recall exact rooms.</p> <p>22 Q. What rooms were up there?</p> <p>23 A. There was a bathroom. I believe there</p> <p>24 was a kitchen. I don't know if there was a living</p> <p>25 room. I don't think there was a living room. I</p>	<p style="text-align: right;">128</p> <p>1 Bidell</p> <p>2 Q. Did you ever speak to anyone above you</p> <p>3 within the investigations bureau indicating to</p> <p>4 them that you had already received a warrant but</p> <p>5 you were going to conduct further investigation to</p> <p>6 determine whether it was a two-family house?</p> <p>7 A. I didn't tell them. It was</p> <p>8 Chief Ribando. I didn't tell him I was going to.</p> <p>9 I told him what I had done.</p> <p>10 Q. You told him after the fact?</p> <p>11 A. I told him after, correct.</p> <p>12 Q. Without giving his name, the CI, is he</p> <p>13 still alive?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever speak with any district</p> <p>16 attorney, anyone from the District Attorney's</p> <p>17 Office, and I'm speaking of assistant district</p> <p>18 attorneys or the DA, regarding your investigation</p> <p>19 into whether 31 Lafayette was a two-family house?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. I didn't think it was necessary.</p> <p>23 Q. When you decided to conduct an</p> <p>24 investigation into whether it was a one- or</p> <p>25 two-family after seeing the two mailboxes, what</p>
<p style="text-align: right;">127</p> <p>1 Bidell</p> <p>2 think it was just bedrooms the rest, but I'm not</p> <p>3 sure.</p> <p>4 Q. Did you seize any property from the</p> <p>5 first floor?</p> <p>6 A. That drug paraphernalia and drugs from</p> <p>7 that basket that woman was holding I described</p> <p>8 earlier that was arrested. And I believe currency</p> <p>9 was recovered from somewhere that was also taken.</p> <p>10 Q. How about the basement? Anything</p> <p>11 seized?</p> <p>12 A. I don't think anything was seized. I</p> <p>13 didn't go down the basement myself.</p> <p>14 Q. What about the second floor?</p> <p>15 A. No.</p> <p>16 Q. No currency?</p> <p>17 A. Not that I'm aware of, no.</p> <p>18 Q. How about any weapons on the first</p> <p>19 floor?</p> <p>20 A. I don't believe any weapons were</p> <p>21 recovered anywhere in the house.</p> <p>22 Q. Once you did the search of the second</p> <p>23 floor did there come a time where you came to the</p> <p>24 conclusion that this was a two-family house?</p> <p>25 A. No.</p>	<p style="text-align: right;">129</p> <p>1 Bidell</p> <p>2 was your intention if you discovered that it was a</p> <p>3 two-family?</p> <p>4 A. If it was a two-family house we</p> <p>5 wouldn't have -- and we could have determined</p> <p>6 that, um, well, I don't know. I really can't say.</p> <p>7 Because I don't know if I would have gotten a</p> <p>8 second search warrant or not. I'm not sure what I</p> <p>9 would have done.</p> <p>10 Q. In that situation, you conduct an</p> <p>11 investigation, you find out that it's a two-family</p> <p>12 house, according to your past practice would you</p> <p>13 go get a second search warrant or simply tell BSO</p> <p>14 only execute in these areas of the house or</p> <p>15 something else?</p> <p>16 A. If we determined it was a second, past</p> <p>17 practice we would get, if we wanted to go and see</p> <p>18 what was there, we would go and get a second</p> <p>19 search warrant.</p> <p>20 Q. I'm not sure I understand your answer,</p> <p>21 because you're saying to see what's there. So let</p> <p>22 me make sure my question is clear.</p> <p>23 In this circumstance you testified</p> <p>24 that you saw some clues that may have led you to</p> <p>25 believe that it was possible this was a two-family</p>

33 (Pages 126 to 129)

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1 Bidell

2 house. So you sent the CI in and you went in

3 yourself along with Walsh and Maher, correct?

4 A. Correct.

5 Q. If as a result of that investigation

6 you determined that it was a two-family house,

7 what would you have done based on past practice?

8 A. Right. Again, to see whether we would

9 want a second search warrant for the second

10 family, and the reason I say whether we would want

11 to or not, because I was kind of getting the

12 impression that there may have been a relationship

13 between that Theresa and Mr. Lecator.

14 So if it was a second family, I may

15 have asked the ADA if we would have enough for a

16 second search warrant or not. That's if we

17 decided that we wanted to go there.

18 Q. But your first search warrant had the

19 whole house.

20 A. Right.

21 Q. So my question to you is, was it your

22 intention to go seek a search warrant just for the

23 first floor, seek separate search warrants for the

24 first and second floor or would you have simply

25 told BSO we have a search warrant for the whole

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1 Bidell

2 house, but only execute on the basement and the

3 first floor, that second floor is a separate

4 residence?

5 A. Would that be my intention?

6 Q. What were you going to do?

7 A. I don't understand the question. I'm

8 sorry.

9 Q. OK, I'll break it down for you. You

10 go and conduct an investigation to make a

11 determination whether it's a two-family or a

12 one-family after seeing the mailboxes, right?

13 A. Right.

14 Q. You make a determination it's a

15 two-family house.

16 A. OK.

17 Q. You got some choices there.

18 A. Right.

19 Q. You can seek a separate search warrant

20 just for the downstairs. You could seek separate

21 search warrants for the downstairs and then one

22 for the upstairs or you could tell BSO, Look,

23 since we got the search warrant we've received

24 information it's a two-family house. The criminal

25 activity, all our evidence indicates it is

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1 Bidell

2 downstairs. We have no evidence anything went on

3 upstairs. Only execute on the first floor and the

4 basement.

5 My question to you is, those are three

6 choices of what you could do. Would you have

7 chosen one them or something else if you made the

8 determination that it was a two-family house?

9 A. Again, we would have to make a

10 determination whether we wanted to go upstairs or

11 not. If we determined it was a two-family house

12 and we still wanted to go up there, we would have

13 to -- we would have to determine, I'm sorry, we

14 would have to determine that we wanted to go up

15 there. So that would be the call.

16 So we would have to -- I'd have to get

17 together with my team members and then if we

18 determined that yes, it's a second family up

19 there, a second total separate residence, first of

20 all, they would have to talk to our guys, did we

21 think we had enough to go up there with the search

22 warrant. After that, then we would have to

23 approach the ADA to see if we had enough for a

24 search warrant.

25 Q. But you already had a search warrant

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1 Bidell

2 of the whole house, right?

3 A. Correct.

4 Q. And let's say you felt, You know what?

5 I want to check upstairs while we're there.

6 After making a determination that that

7 was a separate apartment, would you then have to

8 go get another search warrant, individual search

9 warrants for the top and bottom, or could you just

10 use the old search warrant?

11 A. If we made a determination that it was

12 a second house up there, we would then have to

13 decide whether we wanted to go up there or not.

14 Q. Let's say all right, you decide, you

15 know what? We want to go up there.

16 A. Then we would have to get a second

17 search warrant. If we determined that's a second

18 residence, a totally separate residence, we would

19 get a second search warrant. Same if there was a

20 shed in the garage and we determined we wanted to

21 go into the shed for some reason when we got to

22 the location, we would have to go get a second

23 search warrant or amend the search warrant.

24 Q. Let's say you go up there, you

25 determine that it's a second apartment and you

<p style="text-align: right;">134</p> <p>1 Bidell</p> <p>2 say, You know what? Nah, I don't want to go up to</p> <p>3 the second floor.</p> <p>4 You have a warrant for the whole house</p> <p>5 at that point. What do you do?</p> <p>6 A. So your question is, it is a separate</p> <p>7 house, it is a second apartment?</p> <p>8 Q. You've made that determination.</p> <p>9 A. That it is a separate apartment?</p> <p>10 Q. Yes.</p> <p>11 A. But I don't want to go up there?</p> <p>12 Q. Right. Do you change the warrant or</p> <p>13 do you just tell BSO not to go up there?</p> <p>14 A. I don't know. It sounds too, um, too</p> <p>15 convoluted. I have a search warrant for the</p> <p>16 entire house.</p> <p>17 Q. Let me break this down for you. Use</p> <p>18 this situation. You had a search warrant on</p> <p>19 May 5th for the entire house, correct?</p> <p>20 MS. PETILLO: No, May 13th.</p> <p>21 MR. HORN: No, May 5th.</p> <p>22 Q. You had a search warrant for the whole</p> <p>23 house, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And that's on May 5th, correct?</p>	<p style="text-align: right;">136</p> <p>1 Bidell</p> <p>2 the whole house.</p> <p>3 Do you go get an amended warrant that</p> <p>4 says just the downstairs or do you tell BSO don't</p> <p>5 bother going upstairs, I don't need it, or do you</p> <p>6 say don't worry it, we already got a warrant for</p> <p>7 the whole house. Just search the whole house just</p> <p>8 in case we find anything?</p> <p>9 A. Well, if I determined it's a second</p> <p>10 residence we wouldn't be searching the whole</p> <p>11 house, so that's out.</p> <p>12 Q. So now you have the two choices. Do</p> <p>13 you tell BSO -- do you keep the existing warrant</p> <p>14 for the whole house and tell BSO only search the</p> <p>15 downstairs or do you get that warrant amended?</p> <p>16 A. I think it could go either way. I</p> <p>17 don't know. I think it could go either way.</p> <p>18 Q. The BSO lieutenant that you spoke with</p> <p>19 on the 12th, had you ever met him before?</p> <p>20 A. Yes. Between, um, somewhere between</p> <p>21 April 19th and May 5th, that first meeting.</p> <p>22 Q. I'm sorry, before this investigation.</p> <p>23 A. No.</p> <p>24 Q. Had you ever worked with BSO before?</p> <p>25 A. I may have, but not on a search</p>
<p style="text-align: right;">135</p> <p>1 Bidell</p> <p>2 A. Correct.</p> <p>3 Q. May 10th rolls around. You see some</p> <p>4 clues that this might be a two-family, correct?</p> <p>5 A. Correct.</p> <p>6 Q. You send in the CI to go over there</p> <p>7 and do some snooping around to determine whether</p> <p>8 he can find out whether it's a two-family,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Then you on the 11th actually conduct</p> <p>12 a ruse where you actually enter the premises for</p> <p>13 the purpose of making a determination whether it</p> <p>14 is a two-family or a one-family house, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You when you entered that house on</p> <p>17 May 11th, you know you have a search warrant for</p> <p>18 this entire house, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And if after your investigation you</p> <p>21 determined this is a two-family house and I don't</p> <p>22 really need to bother with that second floor as</p> <p>23 far as a search, I have made a determination that</p> <p>24 all my evidence says that criminal activity has</p> <p>25 taken place downstairs, you now have a warrant for</p>	<p style="text-align: right;">137</p> <p>1 Bidell</p> <p>2 warrant.</p> <p>3 Q. Did you ever work with emergency</p> <p>4 services in the NYPD for the execution of a search</p> <p>5 warrant?</p> <p>6 A. Yes.</p> <p>7 Q. Did you ever while you were at the</p> <p>8 NYPD conduct investigations to determine if areas</p> <p>9 that were the target of warrants were actually</p> <p>10 segregated into separate dwelling areas?</p> <p>11 A. Similar to this case, yes.</p> <p>12 Q. When you were with Housing, did you</p> <p>13 ever work with emergency services?</p> <p>14 A. Yes.</p> <p>15 Q. Had you ever made determinations</p> <p>16 whether there was segregated space in areas in</p> <p>17 which you wished to target with a search warrant?</p> <p>18 A. No.</p> <p>19 Q. You never did execution of search</p> <p>20 warrants in Housing?</p> <p>21 A. We did, but we didn't have to --</p> <p>22 there's such small apartments, there's no two</p> <p>23 mailbox type of thing.</p> <p>24 MR. HORN: Off the record.</p> <p>25 (Discussion off the record.)</p>

35 (Pages 134 to 137)

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1 Bidell

2 Q. Did you ever attempt to discern

3 whether there was two gas meters at the premises?

4 A. I did not.

5 Q. Did you ever attempt to go into the

6 computer and do any research to see if there was

7 any separate billing for utilities at the

8 premises?

9 A. I did not. And the reason for that

10 is, those were -- in my experience they're very

11 misleading. The best thing you can do is if you

12 can get into the house and try and observe

13 yourself and talk to the people, it's going to be

14 more accurate than those computer checks.

15 Q. As far as going and talking to people

16 and making your own observations, people can lie,

17 but what you observe is what you observe, correct?

18 A. Correct.

19 Q. Have you spoken to anyone other than

20 your attorney who is here with you today or to

21 anyone at the Nassau County attorney's office or

22 any private counsel regarding your testimony here

23 today?

24 A. No.

25 Q. Have you spoken to any of the other

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1 Bidell

2 individuals that presented at 31 Lafayette in May

3 of 2010 regarding what you were going to testify

4 about here today?

5 A. What do you mean by presented?

6 Q. Any of the guys that showed up that

7 day for the execution of the warrant.

8 A. Did I speak about what I was going to

9 say?

10 Q. Yes.

11 A. No.

12 Q. Did you talk to any of those guys

13 about the shooting of the woman in that house?

14 A. Not BSO, no. My own investigators

15 that I work with, we spoke about the incident, her

16 being shot, yes.

17 Q. Did you review any materials prior to

18 testifying here today?

19 A. Yes.

20 Q. What did you look at?

21 A. My attorney here showed me some

22 photos.

23 Q. Anything other than photos?

24 A. I reviewed my folder.

25 Q. The arrest folder that you --

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1 Bidell

2 A. Yes.

3 Q. Was that purely to refresh your

4 recollection?

5 A. Yes, just trying to remember what

6 happened.

7 Q. And it need not be noted, but you

8 jotted down some notes for you to remember dates

9 and everything else?

10 A. That was yesterday, yes.

11 Q. And you've utilized that here today.

12 A. Yes.

13 Q. You're on payroll so this question

14 might be odd, but are you drunk or so

15 incapacitated by drugs that you are unable to

16 recall any of the events you have already

17 testified to?

18 A. No.

19 Q. Are you on any medication, whether it

20 be legal or illegal, that would hamper your

21 ability to remember those events?

22 A. No.

23 Q. And are you on any medication or have

24 you consumed any alcohol that has inhibited your

25 ability to communicate your recollections to me

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1 Bidell

2 effectively?

3 A. No.

4 Q. As far as this case goes, this

5 litigation, have you read anything in the

6 newspapers regarding the shooting of the woman at

7 31 Lafayette?

8 A. I believe the next day there was a --

9 there was an article in the paper that I read.

10 There was also a photo of us standing at the

11 scene. I read that. I don't recall at all what

12 it said, but I can remember reading because a

13 photo was there.

14 MR. HORN: A pleasure chatting with

15 you. We're done.

16 (Time noted: 2:45 p.m.)

17

18

19 THOMAS BIDE LL

20

21 Subscribed and sworn to before me

22 this ___ day of ___, 2012.

23

24

25 NOTARY PUBLIC

36 (Pages 138 to 141)

ERRATA

I wish to make the following changes,
for the following reasons:

PAGE LINE

CHANGE: _____

REASON: _____

CHANGE: _____

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____ CHANGE: _____

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WITNESS' SIGNATURE _____ DATE _____

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After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1. The first part of the report is a general introduction to the subject of the study.

2. The second part of the report is a detailed description of the methods used in the study.

3. The third part of the report is a discussion of the results of the study.

4. The fourth part of the report is a conclusion and a list of references.

5. The fifth part of the report is a list of appendices.

6. The sixth part of the report is a list of figures and tables.

7. The seventh part of the report is a list of footnotes.

8. The eighth part of the report is a list of acknowledgments.

9. The ninth part of the report is a list of abbreviations.

10. The tenth part of the report is a list of symbols.

11. The eleventh part of the report is a list of units.

12. The twelfth part of the report is a list of definitions.

13. The thirteenth part of the report is a list of terms.

14. The fourteenth part of the report is a list of acronyms.

15. The fifteenth part of the report is a list of initialisms.

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EXHIBIT B

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March 11, 2014

Honorable Leonard D. Wexler
Long Island Federal Courthouse
944 Federal Plaza
Central Islip, New York 11722

Re: *Davis v. CON et al.*
CV-11-0076 (LDW)(ARL)

Dear Judge Wexler,

This office represents County of Nassau, Nassau County Police Officer Michael Capobianco, Serial #6971, Sgt. Hermann, Police Officer Carl Campbell, Police Officer Dwight Blankenship, Police Officer Joseph Grella and Nassau County District Attorney Investigator Thomas Bidell ("County Defendants") in the above-referenced matter. The purpose of this letter is to inform you Exhibit B, a complete copy of the Nassau County Office of the District Attorney Video, Case No: Hom. SPL 21-10 Ferro, May 13, 2010, from County Defendants' Motion That The Court Rule On The Search Warrant As A Matter Of Law is enclosed.

Thank you for your consideration of the instant application.

Respectfully submitted,

Thomas Lai
Thomas Lai
Deputy County Attorney

cc: Plaintiff (via ECF)

EXHIBIT C

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1 Capobianco
2 information?
3 Would you like an example?
4 A. Go.
5 Q. Did they ever indicate to you for
6 instance how many people lived at the house?
7 A. They indicated that the house would
8 flux with the amount of people in and out of it
9 due to who slept at one place or another. Because
10 there was that second house involved and they
11 weren't too sure who was going to be where at what
12 time.
13 Q. As far as 31 Lafayette goes though,
14 did they ever indicate to you at any point in time
15 a minimum number of people to expect at the
16 premises during the insertion?
17 A. Not that I can recall, not a minimum
18 number.
19 Q. Do you remember at the briefings them
20 indicating that they had a confidential informant
21 that had informed them that drug activity was
22 taking place at the premises?
23 A. Yes.
24 Q. And did they give you a description of
25 information relayed by that confidential

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1 Capobianco
2 informant?
3 A. Yes.
4 Q. What was the information that the
5 confidential informant had given to the
6 authorities regarding the premises?
7 A. Well, that's what I'm saying, I'm not
8 remembering. I know that we received information
9 that there were drugs, possible guns, armed
10 suspects, and they of course had the name of one
11 or two and who we were looking for. But as of
12 right now, I couldn't remember who or what we
13 exactly were going in for.
14 Q. Is there anything that you could look
15 at that would refresh your recollection as to what
16 you knew prior to insertion?
17 A. I would probably need that tactical
18 plan if we had it. I would need the notes on what
19 we had and who was in, and so forth and so on.
20 Q. What kind of notes? Is that also part
21 of it?
22 A. The tactical plan. That would be
23 individuals, and so forth.
24 RQ MR. HORN: At this point in time I
25 would respectfully request again the

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1 Capobianco
2 tactical plan as well as any notes, exhibits
3 or attachments thereto.
4 MS. PETILLO: Take it under
5 advisement, and you can follow up in
6 writing.
7 Q. Did you receive any information that
8 was derived from the confidential informant as to
9 the layout of any portion of the house?
10 A. Two-story house, front and rear door,
11 unknown accessibility up and down. And that's
12 about it. That's all I can remember.
13 Q. Did the confidential informant ever
14 indicate that the property was segregated in any
15 fashion?
16 A. Segregated, again?
17 Q. I'll break it down. Did you ever
18 receive any information at any of the briefings
19 that there was segregated space; i.e., two
20 different living areas?
21 A. Yes.
22 Q. And specifically, what were you
23 informed? What was communicated to you at the
24 briefing?
25 A. That we had, we had, um, the warrant

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1 Capobianco
2 covered the whole house, and that the bottom
3 floor, we weren't sure if the bottom floor linked
4 to the top floor, but the bottom floor, that's why
5 they went in first, the bottom floor was
6 supposedly where the activity was. The top floor
7 was supposedly a secondary unit and we knew that
8 there was a child on the second floor.
9 Q. Did you know the identities of any of
10 the individuals --
11 A. I'm sorry, it's not -- it's not the
12 top floor, but the back of the house led -- OK.
13 Q. Let me see if I can break this down.
14 As far as the way the -- you were informed the
15 house was subdivided was that there was a
16 downstairs that also linked to the front portion
17 of the upstairs?
18 A. We didn't -- we weren't a hundred
19 percent sure if there was, um, if there was
20 accessibility through the apartments or if it was
21 completely separated.
22 Q. But you knew that the space was
23 subdivided into two living areas, correct?
24 A. Yes.
25 Q. And if I'm understanding you

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1 Capobianco
2 correctly, you just weren't sure how these two
3 areas were accessible to each other.
4 A. Correct.
5 Q. Was it communicated to you that the
6 upstairs was only accessible through the rear
7 entrance?
8 A. That I don't remember.
9 Q. You were eventually tasked with the
10 rear entrance, the rear portion of the house,
11 correct?
12 A. Yes.
13 Q. And your primary purpose was to make
14 sure that no one really fled out the windows or
15 fired out --
16 A. Correct.
17 Q. -- the windows, correct?
18 A. Yes.
19 Q. I want to go to exactly what it was
20 your knowledge was regarding the layout of it. So
21 we've established that you knew that it was
22 subdivided and that it had a second story,
23 correct?
24 A. Yes.
25 Q. What else about the residence did you

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1 Capobianco
2 know physically? For instance, did you know there
3 was a basement? Or whether there was a basement I
4 should say.
5 A. I couldn't say yes or no.
6 Q. Do you know whether there was an
7 attic?
8 A. Again, no. I don't know.
9 Q. And you knew there was a child living
10 at the residence, correct?
11 A. Yes, that was given to us.
12 Q. Were you made aware that there were,
13 in the separate dwelling unit upstairs that there
14 were females living in that area?
15 A. Give me a second.
16 Not that I can just pop out now. I
17 remember the child because that's something that's
18 important to us.
19 Q. Were you made aware whether there were
20 any males living on the second floor?
21 A. We weren't sure who would be where.
22 We just knew we had the whole house.
23 Q. When you say that you had the whole
24 house, you're talking about the scope of the
25 warrant, correct?

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1 Capobianco
2 A. Yes.
3 Q. And what else was the scope of the
4 warrant? Not geographically, but what were you
5 entitled to do under the warrant to your
6 understanding?
7 A. I believe we were going in to search
8 for certain subjects and place those subjects
9 under arrest and then we turn over to the
10 detectives to do their investigation.
11 Q. So as far as primary mission was to
12 secure the two subjects of interest, correct?
13 A. Yes.
14 Q. And I know you don't recall them now,
15 but at the time did you know who they were, their
16 names?
17 A. I'm pretty sure, yeah, we had
18 information on them, yes.
19 Q. At the time did you know whether it
20 was a man and a man, a woman and a woman or a man
21 and a woman?
22 A. I can't remember that right now. I'm
23 not sure.
24 Q. Not right now. At the time did you
25 know the gender of who you were looking for?

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1 Capobianco
2 A. Oh, when we were briefed.
3 Q. Yes.
4 A. I am more than sure that was given to
5 us, yes.
6 Q. And if not a photograph, you had a
7 description of people that you were seeking,
8 correct?
9 A. Yes.
10 Q. And once that primary objective was
11 performed BSO's job would then be turned over to
12 whoever the detectives were that were involved in
13 actually the criminal investigation, correct?
14 A. Yes.
15 Q. Directing your attention back to that
16 conference room where you received the briefing,
17 did Sergeant Hermann give you any directive as to
18 what type of equipment you should bring with you?
19 A. Yes. The R4 was my weapon.
20 Q. And that was directed by
21 Sergeant Hermann?
22 A. By the tactical plan that comes
23 through there, who draws what weapons.
24 Q. The tactical plan would not only
25 indicate who draws what weapons, but also who

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1 Capobianco

2 audio, over the radio, of what was transpiring in

3 the front door insertion before individuals came

4 down the driveway?

5 A. Well, you could hear the door go. You

6 could hear the team enter. You could hear them

7 screaming. You can hear things moving like you

8 could tell they're going through. Either opening

9 up doors, you know, breaking through whatever they

10 may need to. That's about it.

11 Q. Did you ever hear any indication that

12 someone, that contact had been made? Something

13 that you heard and went, OK, they've had contact?

14 A. Not that I can remember right now.

15 No.

16 Q. There came a point in time where

17 individuals of BSO came down the driveway,

18 correct?

19 A. Yes.

20 Q. Who?

21 A. I couldn't answer that. When they

22 came down, like I stated before, I caught a team

23 coming in my peripheral and my attention was more

24 or less on the windows to make sure that everybody

25 was safe.

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1 Capobianco

2 I really couldn't tell you who, what

3 team came down, what members made the entry into

4 the back of the building.

5 Q. Was that something you were expecting?

6 A. Yes, yes.

7 Q. And you had been briefed according to

8 the tactical plan that --

9 A. We had both sides of -- sorry.

10 Q. Is it fair to say you were briefed

11 according to the tactical plan that there would be

12 a team coming through your sector at some point in

13 time during the insertion?

14 A. Yes.

15 Q. And were you made aware that they

16 would be coming down the driveway and going past

17 you toward the rear entrance?

18 A. I knew they would be coming down, yes,

19 going to the rear entrance, yes.

20 Q. And all along after the briefing you

21 knew there would be a rear entry, correct?

22 A. Correct.

23 Q. And --

24 A. Well, can I back up?

25 Q. Sure.

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1 Capobianco

2 A. If there was any access through the

3 front I wasn't sure whether they would be coming

4 through the back. Because it was sketchy as to

5 whether or not the apartments were linked.

6 So if there was access then I would

7 have probably expected to see guys just filtering

8 into the back apartment also.

9 Q. And when we're talking about the

10 apartments we're talking about the first floor

11 apartment as opposed to the second floor

12 apartment, correct?

13 A. I guess so. The front and rear would

14 be better to say, because the rear apartment also

15 has a first floor.

16 Q. And the first floor would be the

17 hallway that goes up the stairs, correct?

18 A. I believe there was a room as soon as

19 you entered, yeah, the hallway that goes in.

20 Uh-huh. So there's this rear entry and there is a

21 space in there, yes. So, I mean, there is a front

22 and, a front and rear of the house.

23 Q. Just for clarification, so I'm using,

24 I want to use terms you're comfortable with. The

25 front entry insertion by BSO, that was to get into

173

1 Capobianco

2 what you're using the term "front apartment,"

3 correct?

4 A. The front. And I'm not sure if the

5 front had a second floor or not. I just knew it

6 was a front floor.

7 Q. And then when you refer to the back

8 apartment, you're referring to the upstairs back

9 apartment.

10 A. The rear, yes.

11 Q. That's the one you entered, correct?

12 A. Yes.

13 Q. So if I use the "rear apartment,"

14 you're comfortable with that terminology?

15 A. Yes.

16 Q. As far as the front apartment we're

17 referring to that apartment that was accessible

18 through the front door.

19 A. Yes.

20 Q. There came a point in time when this

21 team went by you coming from the front of the

22 house to the rear portion of the house, correct?

23 A. Yes.

24 Q. Were you made aware of whether there

25 was access to a second floor from the first floor?

174

1 Capobianco
2 A. No.
3 Q. But by them going by, you had been
4 briefed that a rear entry would only be necessary
5 if they can't access the second floor from the
6 first floor, correct?
7 A. We were briefed that we had the whole
8 house and that we would clear the whole house.
9 Q. No, I understand. But earlier when I
10 said whether you anticipated a team coming by you
11 and going through that back door, you had said,
12 well, it depended on the access from the first
13 floor to second floor; is that correct?
14 A. No, what I'm saying is that when they
15 entered through the first floor sometimes a
16 tactical plan or a floor layout is not correct.
17 So if they entered the first floor and they have
18 access to the second floor, they would make access
19 to the second floor.
20 Q. You had a floor layout, correct? You
21 just don't know what form it came in.
22 A. Right, what exactly it looked like. I
23 don't know if it was a sketch or what exactly they
24 had, or they just had a verbal as to what to
25 expect when they went in.

175

1 Capobianco
2 Q. Leaving aside any contingencies or
3 adapting to the plan, the plan as far as the
4 insertion went, what was the plan regarding access
5 to the -- withdrawn.
6 According to the plan what was the
7 insertion through the rear entrance? Was that
8 something that was a contingency or something that
9 was definitely going to be done?
10 Let me rephrase it.
11 When you guys were given the layout
12 did they tell you whether you could access the
13 back apartment through the front door?
14 A. I am not sure.
15 Q. And you had indicated earlier that you
16 didn't expect an insertion through the rear door,
17 but you were told that it was possible if they
18 weren't able to access the back apartment through
19 the front entrance, correct?
20 A. Not that I didn't expect. I expected
21 them to do whatever they needed to do to clear the
22 house.
23 Q. But is it fair to say that you only
24 expected insertion through the rear entrance if
25 they couldn't access the back apartment through

176

1 Capobianco
2 the front door?
3 A. Yes.
4 Q. They came by you and they now -- one
5 of those individuals has a battering ram, correct?
6 A. Yes.
7 Q. Were you actually in a vantage point
8 where you could see them battering the back door?
9 A. My attention was not really on them as
10 far as what they were doing. I could see them
11 peripherally, but my field of vision is still on
12 where I'm supposed to be. So I'm not really
13 watching what they're doing. I'm watching what
14 I'm supposed to be doing.
15 Q. But where you're standing, you had a
16 clear line of sight to them. You just weren't
17 focused on them.
18 A. I wasn't focusing on them, correct.
19 Q. And there came a time through one of
20 your five senses you became aware that they had
21 battered the rear door in, correct?
22 A. Yes.
23 Q. At any point in time prior to them
24 battering the door were you aware of the name of
25 any of the individuals that had come for the rear

177

1 Capobianco
2 entrance insertion?
3 A. No.
4 Q. Did there come a point in time that
5 through your peripheral vision you were able to
6 discern the fact that they had actually executed
7 an insertion through the rear door?
8 A. Yes, and they had also as they came
9 by, I don't remember who it was, they had drawn
10 one extra guy to go in with them. OK?
11 Q. So let's backtrack to that. The team
12 comes down the driveway. You're looking at them
13 through the peripheral. You know that they might
14 be coming back there if they can't get up through
15 the front entrance, correct?
16 A. Yes.
17 Q. They come by you?
18 A. Yes.
19 Q. And at some point in time they
20 incorporate another individual?
21 A. Another body.
22 Q. Into their insertion team, correct?
23 A. Correct.
24 Q. Who do they add to their insertion
25 team?

EXHIBIT D

<p>30</p> <p>1 Grella</p> <p>2 A. Yes.</p> <p>3 Q. The presence of innocent</p> <p>4 bystanders, would that be discussed at the</p> <p>5 briefing?</p> <p>6 A. It's not known who's innocent or</p> <p>7 who's not when we go into a house.</p> <p>8 Q. What if there's segregated space?</p> <p>9 A. If it's a separate and apart</p> <p>10 dwelling, is that what you're asking me?</p> <p>11 Q. Yes.</p> <p>12 A. That would be discussed, yeah.</p> <p>13 Q. Was it discussed at 31 Lafayette</p> <p>14 Avenue?</p> <p>15 A. I don't recall if it was or not, I</p> <p>16 just recall that we had a search warrant for</p> <p>17 the entire premises.</p> <p>18 Q. Well, I'm focused in on if there</p> <p>19 are separate dwelling spaces, is that</p> <p>20 something that's typically discussed at the</p> <p>21 briefing?</p> <p>22 A. It could be.</p> <p>23 Q. And in this particular situation,</p> <p>24 was it discussed at the briefing, separate</p> <p>25 dwelling space?</p>	<p>32</p> <p>1 Grella</p> <p>2 A. I don't recall that.</p> <p>3 Q. You never had any information</p> <p>4 regarding any criminal activity on the second</p> <p>5 floor; isn't that correct?</p> <p>6 A. That I don't recall, no.</p> <p>7 Q. Is it a fact you never had any</p> <p>8 information that any of the residents of the</p> <p>9 second floor were involved in any criminal</p> <p>10 activity?</p> <p>11 A. I don't recall that.</p> <p>12 Q. After you entered the premises and</p> <p>13 reached the kitchen, what did you do?</p> <p>14 A. We turned around and exited out the</p> <p>15 front door in an attempt to get up stairs</p> <p>16 through the back of the house.</p> <p>17 Q. And when you say, "we," who do you</p> <p>18 mean?</p> <p>19 A. Myself and Officer Blankenship.</p> <p>20 Q. Did you eventually make it out to</p> <p>21 the back portion of the house?</p> <p>22 A. Yes.</p> <p>23 Q. With whom did you make it to the</p> <p>24 back portion of the house?</p> <p>25 A. It was myself, Officer Blankenship,</p>
<p>31</p> <p>1 Grella</p> <p>2 A. I don't recall if it was or not.</p> <p>3 Q. You were aware prior to entry</p> <p>4 though that there was segregated space</p> <p>5 between the second floor and the first floor,</p> <p>6 correct?</p> <p>7 A. I don't recall if it was discussed</p> <p>8 that it was segregated space or not, I recall</p> <p>9 we had a search warrant for the entire</p> <p>10 premises.</p> <p>11 Q. You were aware that there would be</p> <p>12 children on the premises, correct?</p> <p>13 A. I believe that was part of the</p> <p>14 briefing.</p> <p>15 Q. And you're aware that they were not</p> <p>16 the children of either subject that you were</p> <p>17 looking for, correct?</p> <p>18 A. That I don't recall.</p> <p>19 Q. There were two individuals who were</p> <p>20 there who were subjects of interest upon</p> <p>21 entry, correct?</p> <p>22 A. I don't recall that either.</p> <p>23 Q. All the information that you had</p> <p>24 indicated that the drug traffic was taking</p> <p>25 place out of the first floor, correct?</p>	<p>33</p> <p>1 Grella</p> <p>2 and I recall Officer Mastropierro being</p> <p>3 there.</p> <p>4 Q. Were there any bosses with you at</p> <p>5 that time?</p> <p>6 A. Not that I recall immediately, no.</p> <p>7 Q. And Officer Mastropierro, he was on</p> <p>8 the battering ram, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And did Officer Mastropierro batter</p> <p>11 the back door?</p> <p>12 A. Yes.</p> <p>13 Q. I'd like to show you what's been</p> <p>14 previously marked as Plaintiff's Exhibit 1</p> <p>15 and ask you if you recognize what is depicted</p> <p>16 in that photograph (handing)?</p> <p>17 A. Looks like the front of the</p> <p>18 residence.</p> <p>19 Q. And we're talking about 31</p> <p>20 Lafayette?</p> <p>21 A. Yes.</p> <p>22 Q. And I'd like to show you what's</p> <p>23 been marked as Plaintiff's Exhibit 2 and ask</p> <p>24 you if you recognize what's depicted in that</p> <p>25 photograph (handing)?</p>

EXHIBIT E

<p>26</p> <p>1 Blankenship</p> <p>2 can from the town the house plans just to</p> <p>3 take a look, but that's no certainty that</p> <p>4 it's still that way because most of the</p> <p>5 houses were built back in the thirties that</p> <p>6 in 2012 it's still the same exact way.</p> <p>7 Q. Now, dealing with 31 Lafayette,</p> <p>8 what information did you have regarding that</p> <p>9 house prior to entry?</p> <p>10 A. We had the whole house.</p> <p>11 Q. Can you stop there. When you say</p> <p>12 you had the whole house, what do you mean?</p> <p>13 A. We had all three floors on the --</p> <p>14 from what we were told from the search</p> <p>15 warrant.</p> <p>16 Q. Well, dealing with just the</p> <p>17 information you were just talking about,</p> <p>18 floors, rooms, bad guys, dogs, children, the</p> <p>19 house plans from the town, what information</p> <p>20 was disseminated to you prior to insertion on</p> <p>21 May 13, 2010?</p> <p>22 A. The second floor was accessible</p> <p>23 through the first floor, the kitchen.</p> <p>24 Q. What was the source of that</p> <p>25 information?</p>	<p>28</p> <p>1 Blankenship</p> <p>2 plan, it would be attached with the tac plan.</p> <p>3 Q. But, do you see the tac plan?</p> <p>4 A. Do we see it after, before? Not</p> <p>5 after we sketch a room and give all that</p> <p>6 information to our bosses I don't go back and</p> <p>7 look at them.</p> <p>8 Q. But, at some point you did see the</p> <p>9 tac plan, correct?</p> <p>10 A. We see what we have at the</p> <p>11 briefing.</p> <p>12 Q. Okay, let me make sure we're clear</p> <p>13 on this. A briefing is given, is a tac plan</p> <p>14 presented to the rank and file?</p> <p>15 A. A plan of what's going to go on is</p> <p>16 because you don't know if you're going to be</p> <p>17 here that day. You may have the shield that</p> <p>18 morning, but you don't know if you're going</p> <p>19 to get sick or what happened. So, we do have</p> <p>20 secondaries, so nothing -- at that point in</p> <p>21 time they'll tell you you're shield two with</p> <p>22 your partner, okay, what do we have, and then</p> <p>23 you go through looking at the house, looking</p> <p>24 at your bad guys, you know, seeing what's</p> <p>25 going on.</p>
<p>27</p> <p>1 Blankenship</p> <p>2 A. I think they had either a UC or an</p> <p>3 undercover inside the -- in the house.</p> <p>4 Q. Were you informed whether there</p> <p>5 would be children?</p> <p>6 A. I don't recall if we had that</p> <p>7 information.</p> <p>8 Q. Is there any document that would</p> <p>9 reflect what information was disseminated</p> <p>10 down to the rank and file prior to the raid</p> <p>11 on May 13, 2010?</p> <p>12 A. You would have to see the boss on</p> <p>13 that if the tac plan what was given out. I</p> <p>14 don't know. I know we had pictures of the</p> <p>15 house.</p> <p>16 Q. Well, as a member -- and I don't</p> <p>17 mean this in a demeaning way. But, as a</p> <p>18 member of the rank and file if you walked out</p> <p>19 of here and said, you know, I'd like to know</p> <p>20 what exactly was put out prior to us going in</p> <p>21 and raiding 31 Lafayette and you went back to</p> <p>22 BSO headquarters, are there any documents</p> <p>23 that you could look at to figure out what was</p> <p>24 put out to you?</p> <p>25 A. You'd probably go back to the tac</p>	<p>29</p> <p>1 Blankenship</p> <p>2 Q. So you do see the tac plan, but</p> <p>3 you're only --</p> <p>4 A. What are you talking as a tac plan?</p> <p>5 Q. I'm using your words.</p> <p>6 A. I'm seeing a picture of the house,</p> <p>7 they're telling us we have three floors.</p> <p>8 That's pretty much our tac plan, we have --</p> <p>9 we don't know what rooms are inside, if</p> <p>10 they've changed them since the time that</p> <p>11 we've gotten, you know, an updated plan from</p> <p>12 the town, if we can pull that up on the</p> <p>13 computer, stuff like that.</p> <p>14 Our tac plan is you're going to be</p> <p>15 first shield, second shield, you go through</p> <p>16 the positions, and after that we've been</p> <p>17 trained you flow off of the first guy. So</p> <p>18 I'm saying tac plan because you know your</p> <p>19 position, you know what the house is, and</p> <p>20 where you're going. After that we'll try to</p> <p>21 do a sketch of the rooms, give that back to</p> <p>22 the boss so if we ever have to hit that house</p> <p>23 again that gets added to it, that's our</p> <p>24 folder for the tac plan for that house.</p> <p>25 MS. PETILLO: Is a tac plan an</p>

8 (Pages 26 to 29)

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IYANNA DAVIS,

Plaintiff,

- against -

THE COUNTY OF NASSAU, NASSAU COUNTY
POLICE OFFICER MICHAEL CAPOBIANCO, serial
#6971, SGT. HERMANN, POLICE OFFICER CARL
CAMPBELL, POLICE OFFICER DWIGHT
BLANKENSHIP, POLICE OFFICER JOSEPH GRELLA,
POLICE OFFICER JOHN DOES #1-5, NASSAU
COUNTY DISTRICT ATTORNEY'S OFFICE
INVESTIGATOR THOMAS BIDELE, NASSAU
COUNTY DISTRICT ATTORNEY'S OFFICE
INVESTIGATORS JOHN DOES #2-5, NASSAU
COUNTY ASSISTANT DISTRICT ATTORNEY JOHN
DOES #1-5.

Defendants.
-----X

CV-11-0076
(LDW)(ARL)

**AFFIDAVIT OF SGT.
JOHN HERMANN IN
FURTHER SUPPORT
OF DEFENDANTS'
MOTION FOR
SUMMARY
JUDGMENT**

SERGEANT JOHN HERMANN, Serial No. 6520, being duly sworn, deposes:

- 1) I have been employed by the Nassau County Police Department (NCPD) since on April 4, 1986.
- 2) Upon joining the NCPD in April of 1986, I received six months of training at the police academy, including firearms and the use of force.
- 3) I was then assigned to the third Precinct where I was a uniform patrol officer until January of 1995.
- 4) I then sat for and passed the promotional exam given by the NCPD to be a Sergeant.

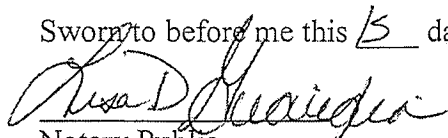
- 5) Upon passing the exam, I attended Supervisory School at the NCPD Academy where I received one month of training including training in the supervision of other officers, use of force, tactical training and the use of search warrants.
- 6) Upon completion of Supervisory School, I was assigned to the Fifth Precinct where I worked as a uniform patrol supervisor until 2000.
- 7) Sometime in 2000, I was transferred to Police Headquarters where I was the Administrative Supervisor for the Support Division until 2003.
- 8) Upon my request, I was transferred to the Bureau of Special Operations ("BSO") in 2003.
- 9) Upon my transfer to this unit, I received firearms and tactical training; including the execution of search warrants.
- 10) In approximately 2005, I also attended the FBI Swat School at Fort Dix for one week where I received training consisting of precision firearms and tactical training regarding the execution of search warrants.
- 11) In addition to the training I received when I first joined BSO, all BSO officers receive periodic training in various topics including, vehicle takedowns, officer rescue, firearms, search warrant execution regarding slow and deliberate versus dynamic entry and room clearing.
- 12) On May 13, 2010, I was one of the supervisors present at the execution of a search warrant at 31 Lafayette Avenue in Hempstead, NY, at which time I was in possession of a "No Knock" Search Warrant Order signed by Judge Steven Jaeger which authorized a search of the entire premises.
- 13) The priority when executing a warrant is people, open doors, closed doors.

- 14) Upon arrival at 31 Lafayette Avenue, members of BSO, all dressed in black dress uniforms, with the word "Police" prominently displayed on the front of the vest, helmet, and shoulders of the shirt, breached the front door, yelling "Police, get down" and proceeded to the kitchen to gain access to the second floor.
- 15) Once we were in the kitchen, Officer Blankenship yelled "alternate breach" as the access door to the second floor was blocked by a refrigerator.
- 16) I then proceeded to the back of the house with Officers Blankenship and Grella in order to access the second floor.
- 17) As we proceeded around the back of the house, I instructed Officers Hughes and Capobianco to assist in the warrant entry and search of the second floor.
- 18) Once the back door was breached, the BSO officers then proceeded up the stairs to the second floor yelling "Police, get down".
- 19) Upon arriving on the second floor, I instructed Officer Capobianco to assist Officer Campbell in executing a secondary search of the room where it was a woman, later determined to be Iyanna Davis, the Plaintiff, was hiding in a closet.
- 20) I then proceeded down to the basement with Officers Blankenship and Grella as that area had not yet been searched.
- 21) We were in the process of conducting a search of the basement when I heard a gunshot from upstairs.
- 22) I then proceeded upstairs where I observed the Plaintiff being removed from the scene in an ambulance.

23) I later learned that Officer Capobianco's weapon had been discharged on the
second floor of the premises.


SGT JOHN HERMANN

Sworn to before me this 15 day of Aug. 2012


Notary Public

LISA D GUARIGLIA
NOTARY PUBLIC State of New York
No. 4890492
Qualified in Suffolk County
Commission Expires June 01 2015

EXHIBIT G

38

1 Campbell
2 brought to perform an entry?
3 A. Yes.
4 Q. Can you just give me an example?
5 A. Multiple floors.
6 Q. And multiple floors would equate to
7 more personnel required; is that correct?
8 A. Yes.
9 Q. Now, when you're attempting to
10 effectuate the arrest of individuals, the
11 other occupants within the premises, is there
12 any information given about those occupants
13 other than their number?
14 A. Gender.
15 Q. How about age?
16 A. Yes, approximate age.
17 Q. And these factors that we've just
18 discussed, the amount of occupants in the
19 house, the possible presence of dogs,
20 children, these are all important factors
21 when planning an entry, correct?
22 A. Yes.
23 Q. At the briefing for 31 Hempstead --
24 MS. PETILLO: 31 Lafayette Avenue.
25 MR. HORN: Just off the record for

39

1 Campbell
2 a second.
3 (Discussion off the record.)
4 Q. In the preparation for the entry
5 into 31 Lafayette, were any of these factors
6 discussed what you've just discussed such as
7 occupants that were anticipated to be on the
8 premises, the possibility of the presence of
9 dogs, children?
10 A. Yes.
11 Q. What was discussed?
12 A. All of that.
13 Q. Did they indicate that there might
14 be the presence of dogs on the premises?
15 A. No, but it was asked.
16 Q. So according to the intel that was
17 collected prior to entry, there was no dog on
18 the premises, correct?
19 MS. PETILLO: Yes?
20 A. Yes, I'm sorry. I didn't speak up,
21 I'm sorry.
22 Q. Now, according to the intel
23 collected prior to the entry, were you
24 informed whether there were any children
25 expected to be at the premises?

40

1 Campbell
2 A. Yes.
3 Q. How many?
4 A. I don't recall.
5 Q. Where were those children expected
6 to be within the premises?
7 A. I believe upstairs.
8 Q. In the upstairs apartment?
9 A. Upstairs, I don't think it was a
10 separate apartment. Can I rephrase that?
11 Q. Would you like to rephrase?
12 A. Yes, I would. I guess it probably
13 wasn't a legal apartment.
14 Q. Leaving aside the Town of Hempstead
15 or the Town of Hempstead building codes, you
16 were made aware that there was a separate
17 apartment upstairs, that there might be a
18 child present, correct?
19 A. I don't know if we were told it was
20 a separate apartment, but I believe we were
21 told there was a child or children upstairs.
22 Q. Were you made aware that there was
23 any subdivision within this house?
24 A. No.
25 Q. Now, I just want to make sure we're

41

1 Campbell
2 clear. Is that something you specifically
3 remember that you were -- there was no
4 discussion regarding separate dwelling space
5 or are you not sure whether there was a
6 discussion regarding separate dwelling space?
7 A. The latter, yeah, I'm not sure.
8 Q. You were informed of the extent of
9 the search warrant, correct?
10 A. Yes.
11 Q. And what were you informed in that
12 regard?
13 A. The premises at 31 Lafayette.
14 Q. To include the entire house,
15 correct?
16 A. Yes.
17 Q. And there was a confidential
18 informant that had given specifics as to the
19 interior of the house, correct?
20 A. I have no knowledge.
21 MS. PETILLO: Off the record.
22 (Discussion off the record.)
23 Q. Do you know if there was any
24 information given at the briefing that was
25 conveyed firsthand from someone who had

EXHIBIT H

POLICE DEPARTMENT, COUNTY OF NASSAU, N.Y.
SUPPORTING DEPOSITION

INSTRUCTIONS: Deponent must place signature immediately after his/her narrative statement which shall include a statement of non-permission when applicable. Police Officer will complete boxed area of form and will witness the deponent's statement by placing signature immediately below the deponent's signature.

Case Report No.	D.D. No.	Defendants Name If Known	Relationship of Deponent to Property	
Date & Time of Deposition 5-13-10 0830	WITNESS	Rank Det	Name Printed Vacciano	Serial No. 8310
			Command 350	

NOTICE

ANY FALSE STATEMENT MADE IN THIS DEPOSITION IS PUNISHABLE AS A CLASS A MISDEMEANOR
 PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

I am Joanne Little 3-30-89 I have read and understand the above notice.

On the _____ day of _____ 19 _____ at about _____ ☐ AM ☐ PM I was home at 21 Lopezville Ave

in Hempstead I live on the second floor with my one year old son Kaynell.

My room mate's name is Theresa Thompson but she was not home last night

Last night my friend Elvise and my half sister Tasha Little had stayed over

with me. I was sleeping in the bedroom that is near the stairs. I woke up

one morning because I heard a lot of noise and yelling coming from the first

floor. I got up and went into the front bedroom where ^{Tasha} ~~Theresa~~ and Elvise were

sleeping. We looked out the window and could see cop's were outside.

I could hear them yelling saying Police and check the back. I

left the room and went downstairs to my door. I could hear them

saying Police open the door, we have a search warrant. I opened the

door and I saw a few cops wearing black uniforms with guns.

They went upstairs and I told one cop that I had my son upstairs.

The cop took me to my bedroom with my son but then they took us

to the front bedroom. It was just Elvise in the room I didn't see

^{Tasha} ~~Theresa~~ The cops asked me who's room was next to the one we

were in and I told them it was my room mate but she wasn't

home. They went in to check it - ^{Elvise} ~~Theresa~~ then they went

check the rest of the house. A few seconds went by when I heard

my closet door open and I heard the cops say Check the closet

at the floor. I heard the cops say it twice. I heard ^{Tasha} ~~Theresa~~ say

I'm sorry I'm scared please don't shoot. Then I heard a gunshot and Tasha

said you shot me. I saw the cop's run out of the room. This is a two and

one claimant that Detective Vacciano is willing for me. X ~~Joanne~~ Little

EXHIBIT I

In the Matter of the Application of

SEARCH WARRANT
ORDER

SW # 23/10

TO: DETECTIVE THOMAS BIDELE OR ANY OTHER INVESTIGATOR OF THE
NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE, OR DETECTIVE OR
POLICE OFFICER IN THE VILLAGE OF HEMPSTEAD POLICE DEPARTMENT
OR THE NASSAU COUNTY POLICE DEPARTMENT.

Proof by affidavit, having been made this day before me by THOMAS BIDE LL, an Investigator in the Nassau County District Attorney's Office, Shield No. 330, that there is reasonable cause to believe that certain property is unlawfully possessed, or has been used, or is possessed for the purpose of being used to commit or conceal the commission of an offense, or constitutes evidence or tends to demonstrate that an offense was committed or that a particular person participated in the commission of an offense, to wit: Violations of Article 220 of the Penal Law of the State of New York.

YOU ARE THEREFORE COMMANDED, within ten (10) days of the issuance of this Order, to make immediate search, without giving notice of your authority and purpose, of the premises located at 31 Lafayette Avenue, Hempstead, Nassau County, New York (hereinafter "target premises") between 6:00 A.M. and 9:00 P.M.

NASSAU COUNTY

000021

The target premises is located on the west side of Lafayette Avenue in Hempstead. Meriam Street is approximately 20 feet to the north of the target premises, and it runs east to west and Van Cort Avenue is approximately 400 feet to the south of the target premises, and it runs east to west. The target premises is a two-story residential home with a brown shingled roof and an enclosed stucco porch on south-side of the front of the house and siding on the north-side of the front of the house. There is a driveway on the south-side of the target premises, and it leads from the street to the back of the house where there is a detached garage. There is a door on the front of the home with two cement steps leading to it. The front door is white and next to the front door, on the south side, is the number "31" over a black mailbox. The house on the south-side of the target premises has the number "25" on it and the house on the north-side of the target premises has the number "35" on it.

YOU ARE FURTHER AUTHORIZED to search the entire target premises described above, for cocaine, packaging material and weighing devices, drug paraphernalia, firearms, ammunition, sums of money and records, including computer records, computers, the information contained in computers and computer systems, including printers, monitors, hard drives, floppy discs, compact discs (CDs), cellular telephones, electronic organizers, papers, loose or bound with names and numbers on them, locked or unlocked containers, including but not limited to, storage areas, vaults, cabinets, safes, closets, strong boxes, desks, drawers, suitcases, briefcases, boxes, or other such enclosures where narcotics or similar equipment can be found inside, and other evidence and/or record of illegal sales and/or possession of heroin in violation of Article 220 of the Penal Law of the State of New York.

YOU ARE FURTHER AUTHORIZED to photograph and/or videotape the interior and exterior of the target premises, and the effects found therein.


YOU ARE FURTHER DIRECTED that if you find such evidence, you are to seize it and bring it before me in the County Courthouse, County of Nassau, without unnecessary delay.

NASSAU COUNTY

IT IS FURTHER ORDERED that the accompanying affidavit be sealed for the reasons
set forth therein.

Dated Mineola, New York:
May 5, 2010

Time: 3:40 L.m.


HON. STEVEN JAEGER
ACTING SUPREME COURT JUDGE
SITTING AS A LOCAL CRIMINAL COURT JUDGE

NASSAU COUNTY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IYANNA DAVIS,

Plaintiffs,

**11-CV-0076
(LDW)(ARL)**

-against-

COUNTY OF NASSAU, NASSAU COUNTY POLICE
OFFICER MICHAEL CAPOBIANCO, Serial #6971,
SGT. HERMANN, POLICE OFFICER CARL
CAMPBELL, POLICE OFFICER DWIGHT
BLANKENSHIP, POLICE OFFICER JOSEPH
GRELLA, POLICE OFFICER JOHN DOES #1-5,
NASSAU COUNTY DISTRICT ATTORNEY'S
OFFICE INVESTIGATOR THOMAS BIDELE,
NASSAU COUNTY DISTRICT ATTORNEY'S
OFFICE INVESTIGATORS JOHN DOES #2-5,
NASSAU COUNTY ASSISTANT DISTRICT
ATTORNEY JOHN DOES #1-5,

**COUNTY DEFENDANTS'
MOTION THAT THE
COURT RULE ON THE
SEARCH WARRANT
AS A MATTER OF LAW**

Defendants.

-----X
PRELIMINARY STATEMENT

The facts, as a matter of law, establish that it was objectively reasonable to conduct a search of the entire premises. Defendants County of Nassau, Nassau County Police Officer Michael Capobianco, Serial #6971, Sgt. Hermann, Police Officer Carl Campbell, Police Officer Dwight Blankenship, Police Officer Joseph Grella and Nassau County District Attorney Investigator Thomas Bidell ("County Defendants") at no point came into possession of clear information after issuance but before execution of the warrant that the second story of the premises ("31 Lafayette Avenue") was a completely separate residence not involved in the drug trade. *See [DE # 52]; Davis v. County. of Nassau*, 2013 WL 66021 at *12 (E.D.N.Y. Jan. 3, 2013).

ARGUMENT

I. County Defendants are entitled to qualified immunity.

For the reasons set forth below, the County Defendants are entitled to qualified immunity.

a. District Attorney Investigator Bidell is entitled to qualified immunity.

When the question of qualified immunity turns on statements made in support of an affidavit the corrected-affidavit doctrine is applied. *Southerland v. City of New York*, 680 F.3d 127, 143 (2d Cir. 2012) *cert. denied*, 133 S. Ct. 980, 184 L. Ed. 2d 773 (U.S. 2013). Pursuant to the corrected-affidavit doctrine, a defendant is entitled to qualified immunity even though an erroneous statement of fact was made in a search-warrant affidavit unless the false statements were “necessary to the finding of probable cause.” *Id.* (internal citations omitted). To determine if the false statements were “necessary to the finding of probable cause” the court puts aside the allegedly false material, incorporates any omitted information and then determines whether the contents of the corrected affidavit would have supported the finding of probable cause. *Id.* at 143-144. “[Q]ualified immunity is warranted only if, after correcting for the false or misleading statements, the affidavit accompanying the warrant was sufficient to support a reasonable officer's belief that probable cause existed.” *Id.* at 143-144 (internal quotation marks omitted).

District Attorney Investigator Bidell (“Bidell”) did not come into possession of clear information, after issuance but before the execution of the warrant, that the second story of the premises was a completely separate residence not involved in the drug trade.

There is no doubt that the Justice issuing the warrant to Bidell was a “disinterested magistrate” and that the information provided to the issuing Justice at the time of issuance was sufficient to establish probable cause to believe that drugs were being sold at the Premises. *Id.* at 8.

After obtaining the warrant Bidell, accompanied by fellow District Attorney Investigators Walsh and Maher, went to the premises to conduct a ruse. Bidell knocked on the door and entered the house under a ruse to determine if Rashon lived there and whether it was a one-family or two-family home. *See* Exhibit A annexed to Decl. of Thomas Lai at 48-49:22-3; 50-51:20-6. Although Bidell noticed two mailboxes after obtaining the warrant, he did not recall seeing any names on the mailboxes during his observations and learned from various individuals Rashon resided at the premises. *Id.* at 52-53:20-17, 62:14-22, 66:3-7.

Inside the premises Bidell was allowed to have a look around. *Id.* at 64:18-22. He was walked straight through the kitchen, did not see any stairs at the time, did not go into any other rooms and did not open any doors. *Id.* at 64-65:18-9. Although he was looking for a staircase he did not observe one. *Id.* at 64-65:18-9. Bidell was then led through the kitchen door to an “enclosed porch area” where there were two other doors. *Id.* at 66-67:22-4; *see* Exhibit B annexed to Decl. of Thomas Lai at 1:30-2:25. The “enclosed porch area” is indoors. *Id.* at 66-67:22-4; *see* Exhibit B annexed to Decl. of Thomas Lai at 1:30-2:25. One of those doors was then used to gain access to the upstairs. *Id.* at 66-67:22-4. He knocked on the door and was greeted by Theresa Thompkins. *Id.* at 70-71: 21-11. Theresa Thompkins told Bidell she resided on the second floor with her child. *Id.* at 73:10-22. Ms. Thompkins also stated that another woman she didn’t know, who had a room with a child. *Id.* at 73:10-22. While upstairs Bidell was looking for an inside staircase but was unable to make a determination because the other doors appeared to be closed and if they were open he was unable to see into the other rooms. *Id.* at 75:3-8; 76:8-14; 77:2-9. He also learned from Theresa Thompkins that Rashon frequently “hangs out” with her upstairs and he got the impression there may have been an ongoing relationship between Theresa Thompkins and Rashon. *Id.* at 74:1-13; 130:5-14.

After exiting the premises Bidell performed a computer search and then informed the BSO lieutenant. *Id.* at 86-87:21-2; 89:7-12. Bidell told the BSO Lieutenant he determined the premises

was a one-family home, there were children in the home and the premises was affiliated with 20 Miriam, which is a known gang hangout. *Id.* at 90-91:5-5; 108-109:17-6. Because there were children in the house Bidell instructed that a flash bang not be used. *Id.* at 90:13-19.

In addition, Plaintiff has persistently claimed that on May 12, 2010 “Bidell met with the members of BSO who were to execute the warrant at 31 Lafayette Avenue and relayed all the information he possessed about the premises and his investigation, including informing the BSO members, who were to execute the warrant, that 31 Lafayette Avenue was a two family house.” In reality, Bidell never testified to that effect. *Id.* at 108-109:21-6. Bidell testified:

Q. So my question to you is, you just testified that you told the lieutenant in BSO that you couldn't make a determination, did you not?

A. I couldn't make a determination that it was a two-family house. I didn't see that it was a two-family. Because two mailboxes would lend you to believe that it was a two-family. However, I wasn't able to make that determination.

Q.. I'm going to have to ask this question again because I'm not clear on your response.

A. Uh-huh.

Q. Did you tell the lieutenant in BSO that you made a determination that it was your belief that that was a one-family house?

A, Yes.

Q. Did you tell the lieutenant from BSO that you could not make a determination as to whether it was a one-family or a two-family?

A. No if I said that, I misspoke.

Q. When you had this conversation with the lieutenant from BSO and you told him that you had made a determination that this was a one-family, did you give him any support for your opinion?

A. No.

Id. at 108-109:21-6.

Therefore District Attorney Investigator Bidell is entitled to qualified immunity because a reasonable police officer who obtained the above information would have been privileged to search the second floor of the premises.

b. Police Officer Michael Capobianco is entitled to qualified immunity.

Police Officer Michael Capobianco (“Capobianco”) did not come into possession of clear information, after issuance but before the execution of the warrant, that the second story of the premises was a completely separate residence not involved in the drug trade.

Capobianco testified that 31 Lafayette Avenue:

- was a “[t]wo story house, front and rear door, unknown accessibility up and down. And that’s about it. That’s all that I can remember.” *See* Exhibit C annexed to Decl. of Thomas Lai at 140:10-11.
- contained “two different living areas.” *Id.* at 140:19-20.
- was informed that “the warrant covered the *whole house*, and that the bottom floor, we weren’t sure if the bottom floor linked to the top floor, but the bottom floor was supposedly where the activity was. The top floor was supposedly a secondary unit and we knew that there was a child on the second floor.” *Id.* at 140-141:25-8.
- “wasn’t a hundred percent sure if there was, um, if there was accessibility through the apartments or if it was completely separate.” *Id.* at 141:18-21.
- knew that the space was “subdivided into two living areas” and was not “sure how these two areas were accessible to each other.” *Id.* at 141:22-24.
- was not sure if entry into the back of the house would be necessary because “[i]f there was any access through the front...[he] wasn’t sure whether they would be coming through the back. Because it was sketchy as to whether or not the apartments were linked. So if there was access then...[he] would have probably expected to see guys just filtering into the back apartment also.” *Id.* at 172:2-9.
- was “briefed that we had the whole house and that we would clear the whole house.” *Id.* at 174:7-8.
- only expected to enter the back of the house if the other officers “couldn’t access the back apartment through the front door.” *Id.* at 175-6:23-3.

In addition, Police Officer Michael Capobianco adopted the terminology “rear apartment” at the March 8, 2012 deposition:

Q. Just for clarification, so I’m using, I want to use terms you’re comfortable with. The front entry insertion by BSO, that was to get into what you’re using the term “front apartment,” correct?

A. The front. And I’m not sure if the front had a second floor or not. I just knew it was the front.

Q. And then when you refer to the back apartment, you’re referring to the upstairs back apartment.

A. The rear, yes.

Q. That’s the one you entered, correct?

A. Yes.

A. So if I use the “rear apartment,” you’re comfortable with that terminology.

Q. Yes.

Id. at 172-3:23-15.

The “terminology” Capobianco is “comfortable with” is irrelevant to the validity of the warrant.

Further, the term “terminology” quote “rear apartment” was a term suggested by Plaintiff’s counsel and not a term or phrase that Capobianco used on his own.

Moreover, none of Capobianco’s testimony constitutes clear information, after issuance but before the execution of the warrant, that the second story of the premises was a completely separate residence not involved in the drug trade. Therefore Police Officer Michael Capobianco is entitled to qualified immunity because a reasonable police officer with the above information would have been privileged to search the second floor of the premises.

c. Sgt. Hermann, Police Officer Carl Campbell, Police Officer Dwight Blankenship, Police Officer Joseph Grella are entitled to qualified immunity.

Sgt. Hermann, Police Officer Carl Campbell, Police Officer Dwight Blankenship and Police Officer Joseph Grella did not come into possession of clear information, after issuance but before the execution of the warrant, that the second story of the premises was a completely separate residence not involved in the drug trade. They were all informed that they had a search warrant for the entire premises. *See* Exhibit D annexed to Decl. of Thomas Lai at 30-31; Exhibit E annexed to Decl. of Thomas Lai at 26; Exhibit G annexed to Decl. of Thomas Lai at 41; Exhibit F annexed to Decl. of Thomas Lai at ¶12. Therefore Sgt. Hermann, Police Officer Carl Campbell, Police Officer Dwight Blankenship and Police Officer Joseph Grella are entitled to qualified immunity because reasonable police officers informed they had a warrant for the entire premises would have been privileged to search the second floor of the premises.

II. In addition, the County Defendants are entitled to qualified immunity because it was objectively reasonable for the County Defendants to secure the second floor.

Assuming, *arguendo*, that the warrant was overbroad in regards to the second floor of the premises the County Defendants are nonetheless entitled to qualified immunity. The County Defendants were justified in accessing the second floor of the premises because Joanna Little opened the back door accessing the stairs, thus consenting to the County Defendants entering the upstairs portion of the premises, and alerted the County Defendants to the presence of people on the second floor while they were carrying out a search warrant for guns and drugs. As a result, the County Defendants were entitled to perform a protective sweep. *See* Exhibit E annexed to Decl. of Thomas Lai at 54:3-12; Exhibit G annexed to Reply Decl. in Support of Thomas Lai; Exhibit H annexed to Decl. in Support of Thomas Lai. The act of Joanna Little opening the interior door that accesses the hallway on the first floor and the stairs provided the County Defendants with an *articulable fact*, thus permitting them to perform a protective sweep on the second floor and search in the closet. *See*

People v. Boyland, 79 A.D.3d 1658, 914 N.Y.S.2d 805 (2010) *aff'd*. 20 N.Y.3d 879, 979 N.E.2d 1192 (2012). Therefore, even if the search warrant was overbroad in regards to the second floor of the premises, the County Defendants are nonetheless entitled to qualified immunity because a reasonable police officer with the above information would have been privileged to perform a protective sweep on the second floor of the premises and open the closet door.

CONCLUSION

The County Defendants at no point came into possession of clear information after issuance but before execution of the warrant that the second story of the premises (“31 Lafayette Avenue”) was a completely separate residence not involved in the drug trade. *See [DE # 52]; Davis v. County. of Nassau*, 2013 WL 66021 at *12 (E.D.N.Y. Jan. 3, 2013). As a result, the warrant is a matter of law and the County Defendants are entitled to qualified immunity because it was objectively reasonable for the County Defendants to conduct a search of the entire premises.

Dated: Mineola, New York
March 11, 2014

CARNELL T. FOSKEY
Acting County Attorney

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